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22
23 IN THE UNITED STATES DISTRICT COURT
24 FOR THE CENTRAL DISTRICT OF CALIFORNIA
25 SOUTHERN DIVISION
26

27 SHARON COBB, et al., individually
28 and on behalf of all others similarly
situated,

Plaintiffs,

vs.

BSH HOME APPLIANCES
CORPORATION, a Delaware
Corporation,

Defendant.

Case No. SACV10-711 DOC (ANx)

**STIPULATION RE: FILING OF
PROVISIONAL FOURTH
CONSOLIDATED AMENDED
COMPLAINT**

Judge: Hon. David O. Carter

1 Plaintiffs Dennis Demereckis, Beverly Gibson, Trish Isabella, and Nancy
2 Wentworth (collectively “Plaintiffs”) and Defendant BSH Home Appliances
3 Corporation (“BSH”) (collectively the “Parties”), through their respective counsel
4 of record, submit the following Stipulation Re Filing of Provisional Fourth
5 Consolidated Amended Complaint.
6

7 **STIPULATION**

8 1. Whereas, the Parties have finalized their proposed class action
9 Settlement, and, concurrently herewith, are submitting Plaintiffs’ Unopposed
10 Motion for Preliminary Approval of Class Action Settlement (“Preliminary
11 Approval Motion”) and supporting materials;

12 2. Whereas, Plaintiffs wish to amend the currently operative Third
13 Consolidated Amended Complaint (“TCAC”) to better reflect the scope of the
14 Settlement by removing references to 24” Bosch Axxis and Siemens UltraStack
15 machines from the list of subject washing machines in the TCAC as they are not
16 part of the certified or settlement class;

17 3. Whereas, Defendant has reviewed Plaintiffs’ proposed Conditional
18 Fourth Consolidated Amended Complaint, attached hereto as Exhibit 1;

19 4. Whereas, BSH expressly denies the allegations set forth in the
20 proposed Provisional Fourth Amended Consolidated Complaint, but for settlement
21 purposes only does not object to the filing of the Provisional Fourth Consolidated
22 Amended Complaint;

23 5. Whereas, the Parties agree that this stipulation is subject to revocation
24 by any party in the event that: (i) the Court does not enter the Preliminary
25 Approval Order; (ii) the Court does not enter the Final Approval Order; (iii) any
26 such Final Approval Order does not become final and effective for any reason; or
27 (iv) the Settlement Agreement is terminated. Upon any such event, the parties shall
28 notify the Court and the Third Consolidated Amended Complaint shall again

1 become the operative complaint for all purposes as if the proposed Provisional
2 Fourth Consolidated Amended Complaint were never filed;

3 WHEREAS, the Parties agree that Defendant's time to respond to the
4 proposed Provisional Fourth Consolidated Amended Complaint shall be stayed
5 pending the settlement approval process.

6 NOW THEREFORE, the Parties, by and through their undersigned counsel,
7 stipulate and agree that Plaintiffs should be granted leave to file the Provisional
8 Fourth Consolidated Amended Complaint.

9 A proposed form of Order is submitted herewith.

10
11 **IT IS SO STIPULATED.**
12

13 Dated: December 12, 2014 JONES DAY

14 /s/ Erik K. Swanholt

15 By: Erik K. Swanholt
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20 Counsel for Defendant
21 BSH Home Appliances Corporation

22 Dated: December 12, 2014 Respectfully submitted,

23 EPPSTEINER & FIORICA
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25 /s/ Stuart M. Eppsteiner

26 By : Stuart M. Eppsteiner (SBN 098973)
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EXHIBIT 1

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7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**

11 DENNIS DEMERECKIS, BEVERLY
12 GIBSON, TRISH ISABELLA, and
13 NANCY WENTWORTH, individually
and on behalf of all others similarly
14 situated,

15 **PLAINTIFFS,**

16 vs.

17 BSH HOME APPLIANCES
CORPORATION, a Delaware
18 Corporation,

19 **DEFENDANT.**

) Case No. SACV10-711 DOC (ANx)
) *(Consolidated with Case No.*
) SACV10-01562 CJC (FFMx))

) **PROVISIONAL FOURTH**
) **CONSOLIDATED AMENDED**
) **COMPLAINT**

20
21
22 Plaintiffs Beverly Gibson (“Ms. Gibson”), Trish Isabella (“Ms. Isabella”),
23 Dennis Demereckis (“Mr. Demereckis”), and Nancy Wentworth (“Ms. Wentworth”)
24 (jointly referred to as “Consumer Representatives”) by and through their
25 undersigned counsel, individually and on behalf of all others similarly situated (the
26 “Class” (The Class and Consumer Representatives jointly are referred to as

1 “Plaintiffs”)), allege the following facts and claims upon personal knowledge and
2 upon information and belief as to all other matters as follows.

3 **INTRODUCTION**

4 1. The Consumer Representatives bring this class action on behalf of
5 themselves, and all others similarly situated, against Defendant BSH Home
6 Appliances Corporation (“Defendant,” “Bosch” or “Siemens”) seeking damages,
7 restitution, a constructive trust, and injunctive relief for the proposed Class as
8 defined herein.

9 2. This action is brought to remedy violations of law in connection with
10 Defendant’s design, sale, and warranting of only its 27” Horizontal Axis/Front-
11 Loading Automatic Clothes Washers, including, but not limited to, Bosch Nexxt and
12 Vision Models, and Siemens ultraSense models (hereinafter collectively referred to
13 as “Washing Machine(s)” or “Machine(s)”). Bosch marketed its 27” Machines
14 under the Nexxt, Vision, and Siemens ultraSense model lines. The specific Bosch
15 and Siemens brand Washing Machines, in contrast to all of the other Bosch and
16 Siemens brand Washing Machines, parts, pieces, operation, and materials are the
17 same.

18 3. The North American washing machine market today is comprised of both
19 vertical (top-loading) and horizontal axis (front-loading) washing machines. The
20 Washing Machines do not effectively self clean. Instead the Machines’ defective
21 parts, including, its sump area, backside of the Outer Tub, detergent dispenser,
22 gaskets, and baffles attached to the interior of the Clothes Basket retain dirty water
23 and moisture which cause Biofilm (defined below) to be deposited in areas of the
24 machine which wash water comes in contact with and which fosters and causes
25 bioorganic material to develop inside of them and emit Foul Odors (defined below).

26 4. The Foul Odors are proof of the actual problem: the Washing Machines’
27 defective parts retain dirty wash water that foments the development of Biofilm,
28 which begets mold and bacteria and Mold Problem (defined below), which produce

1 Foul Odors. The dirty wash water carries and has within it, remnants and particles
2 of detergent, fabric softeners, dirt, scum, skin, hair, oil, bugs, food, beverages and
3 other organic material. The defects in the parts of the Machines have defects that
4 were unintended by Bosch. Bosch has proclaimed that its design intention is to
5 design parts and assembled Machines that evacuate and eliminate, during the
6 Machine's operation, dirty wash water and the particles and remnants described
7 above. However because of unintended defects in the parts used to assemble the
8 Machines, and defects in assembled and completed Machines, they produce Biofilm,
9 the Mold Problem (defined below) and the Foul Odors. "Biofilm," an amalgamation
10 of remnants and particles of detergents, fabric softeners, dirt, scum, skin, hair, oils,
11 bugs, food, beverages, and other organic material, develops within the Washing
12 Machines in places where consumers cannot remove it. Bacteria, mold, fungus, and
13 other bioorganic matter begin to feed and grow on and become incorporated into the
14 Biofilm ("Mold Problem"). Within a short time after the Machines are put to use,
15 the Mold Problem produces odors that offend the olfactory senses of Plaintiffs
16 ("Foul Odors").

17 5. The Washing Machines' have defective parts that cause, even when the
18 Machines are used as Bosch recommends, the accumulation of Biofilm, and
19 development of Foul Odors and the Mold Problem. These defective parts presently
20 known by Plaintiffs, which they reserve the right to amend to add other parts that
21 they may learn are also defective and contribute to the development of Biofilm, The
22 Mold Problem or Foul Odors are the back wall of the Outer Tub, the Baffles or
23 Paddles, the Clothes Basket Support Bracket, the detergent dispenser, the detergent
24 dispense boot, the door bellow, and the Sump/Heating Element area of the Outer
25 Tub (the "Defective Parts"). The Defective Parts cause dirty wash water retained in
26 the Machines, after the wash cycle is completed to develop Biofilm, the Mold
27 Problem and Foul Odors.

1 6. As a result of the presence of the Defective Parts in the Machines and the
2 effects they cause, e.g. Biofilm, the Mold Problem and Foul Odors, the Washing
3 Machines do not satisfy the purpose for which they were purchased; *i.e.*, to clean
4 clothes, towels, bedding, and other washable items (hereinafter collectively referred
5 to as “Clothes”) and make Clothes smell fresh and clean.

6 7. As a result of the presence of the Defective Parts in the Machines and the
7 effects they cause, e.g. Biofilm, the Mold Problem and Foul Odors, the Washing
8 Machines cause all Machine Owners’ Clothes to not be clean, smell foul, stink, and
9 carry and emit offensive and obnoxious odors.

10 8. The Consumer Representatives assert claims on behalf of themselves and
11 a Nationwide Class, or a California subclass in the alternative, for violations of the
12 “Unfair,” Unlawful” and “Fraudulent” prongs of California’s Unfair Competition
13 Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (“UCL”), Cal. Bus. & Prof. Code §
14 17500 *et seq.* (“FAL”), and Cal. Civ. Code § 1750 *et seq.* (“CLRA”) and breach of
15 implied warranty under the Magnuson-Moss Warranty Act (“MMWA”)

16 9. In addition, and in the alternative to the Nationwide Class, Plaintiff
17 Gibson asserts claims on behalf of a Maryland Subclass (defined below) for
18 violation of the Maryland Consumer Protection Act, Maryland Code, Commercial
19 Law § 13-101, *et seq.*, and breach of express warranty under Maryland Commercial
20 Law § 2-313.

21 10. In addition, and in the alternative to the Nationwide Class, Plaintiff
22 Isabella asserts claims on behalf of a New York Subclass (defined below) for
23 violation of New York General Business Law §§ 349 and 350, and breach of implied
24 warranties under the MMWA, and N.Y. UCC § 2-314, and New York common law.

25 11. In addition, and in the alternative to the Nationwide Class, Plaintiff
26 Wentworth asserts claims on behalf of a California Subclass (defined below) for
27 breach of express written and implied warranties under the MMWA, California
28

1 Commercial Code §§ 2313, the Song-Beverly Act, Cal. Civ. Code § 1790 *et seq.*
2 (“Song-Beverly”), and California common law.

3 12. In addition to, and in the alternative to the Nationwide Class, Plaintiff
4 Demereckis asserts claims on behalf of an Illinois Subclass (defined below) for
5 violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815
6 ILCS 505/1, *et seq.* The Nationwide Class, Maryland Subclass, New York Subclass,
7 California Subclass and Illinois Subclass are cumulatively hereinafter referred to as
8 the “Class”.

9 10 **THE PARTIES**

11 **Plaintiffs**

12 13. Plaintiff Beverly Gibson is a citizen of Maryland. On or about
13 January 7, 2009, Plaintiff Gibson purchased a Bosch Nexxt 800 Washing Machine
14 from US-Appliance.com, an online appliance retailer located in Michigan.

15 14. Within several months of owning and operating the Washing Machine
16 under normal household conditions, and as recommended by Bosch, the Washing
17 Machine accumulated Biofilm, and developed Foul Odors and the Mold Problem.
18 Ms. Gibson notified Bosch that her Washing Machine had defective parts and the
19 Mold Problem within one year of her date of purchase of the washer.

20 15. Plaintiff Gibson purchased a Bosch Washing Machine and used it for its
21 intended purpose, to clean Clothes, and as recommended and instructed by Bosch.
22 Ms. Gibson experienced, during Bosch’s express warranty period, and continues to
23 experience the accumulation of Biofilm, Foul Odors, and the Mold Problem in her
24 Washing Machine and on Clothes washed in her Washing Machine. Ms. Gibson
25 provided Bosch with pre-suit notice of her belief that her Washing Machine had
26 defects that caused Biofilm and the Mold Problem in her Machine to manifest and
27 followed actions Bosch recommended to avoid and eliminate Biofilm, Foul Odors,
28 and the Mold Problem. Bosch sent instructions to Ms. Gibson regarding products to

1 purchase, which it claimed would rid her Machine of Biofilm, Foul Odors and Mold
2 Problems. Ms. Gibson followed Bosch directions of what to do to her Machine to
3 rid it of Biofilm, Foul Odors and Mold Problems; however, Ms. Gibson's Washing
4 Machine continues to have Biofilm, Foul Odors and the Mold Problem.

5 16. Plaintiff Trish Isabella is a citizen of New York and resides in
6 Johnstown, New York. On or about September 19, 2007, Trish Isabella purchased a
7 Bosch Nexxt 500 Series Washing Machine from a Showcase Furniture retail store in
8 Johnstown, New York. Within several months of owning and operating the Machine
9 under normal household conditions, and as recommended by Bosch, Ms. Isabella
10 noticed the Mold Problem. Ms. Isabella tried to remediate the Biofilm, Mold
11 Problem, and Foul Odors on numerous occasions, but her Washing Machine
12 continues to have Biofilm, the Mold Problem and Foul Odors.

13 17. Plaintiff Nancy Wentworth is a citizen of California and resides in San
14 Diego, California. On or about February 20, 2008, Plaintiff Wentworth purchased a
15 Bosch Nexxt DLX Washing Machine from a Pacific Sales retail store located in San
16 Diego, California. Within several months of owning and operating the Washing
17 Machine under normal household conditions, and as recommended by Bosch, the
18 Washing Machine accumulated Biofilm, and developed Foul Odors and the Mold
19 Problem. Ms. Wentworth notified Bosch of the Mold Problem within two years of
20 her date of purchase of her Washing Machine.

21 18. Plaintiff Wentworth purchased a Bosch Machine and used it for its
22 intended purpose and as recommended and instructed by Bosch. Plaintiff
23 Wentworth experienced and continues to experience the accumulation of Biofilm,
24 Foul Odors, and the Mold Problem in her Washing Machine and on Clothes washed
25 in her Washing Machine. Plaintiff provided Bosch with pre-suit notice that she
26 believed her Washing Machine had defective parts and of the Biofilm, Foul Odors
27 and Mold Problem in her Machine and followed actions Bosch recommended to
28 avoid and eliminate Biofilm, Foul Odors, and the Mold Problem. Bosch replaced the

1 door gasket in Wentworth's Washing Machine on January 19, 2010; however
2 Ms. Wentworth's replacement door gasket quickly developed new Biofilm, Foul
3 Odors and the Mold Problem. In addition, Plaintiffs are informed, believe and
4 contend that Ms. Wentworth's Machine had Biofilm and Mold on the back wall of
5 the Outer Tub when she notified Bosch of the defects and their effects, which defect
6 part was not replaced by Bosch in response to Ms. Wentworth's notice.

7 19. Indeed, on June 17, 2010, Bosch, through its employee and counsel,
8 visually inspected and operated Ms. Wentworth's machine. This event happened
9 within six months of Bosch's replacement of the Machine's door gasket. By
10 June 17, 2010, Ms. Wentworth's 6-month old gasket was inundated with the Mold
11 Problem. A subsequent inspection and disassembly of Ms. Wentworth's washer in
12 the presence of Bosch's counsel, followed by laboratory analysis of swab samples
13 taken from the inside parts of Ms. Wentworth's Machine confirmed the presence of
14 mold, Biofilm, and bacteria inside Ms. Wentworth's washer.

15 20. Plaintiff Dennis Demereckis is a citizen of Illinois and resides in
16 Mokena, Illinois. On or about May 22, 2009, Plaintiff Demereckis purchased a
17 Bosch Nexxt Washing Machine from Grant's Appliances Electronics and More
18 ("Grant's") located in Orland Park, Illinois. Within six months of owning and
19 operating the Machine for normal household purposes and use, and as recommended
20 by Bosch, the Machine accumulated Biofilm and developed Foul Odors and the
21 Mold Problem. Plaintiff Demereckis spoke to a Bosch service representative within
22 3 months of purchasing his Bosch Nexxt Washer regarding Foul Odors and the Mold
23 Problems in his Machine and Bosch's service representative advised him to run
24 empty bleach cycles with hot water every three months and to use powder detergents
25 for the purpose of trying to reduce the Foul Odors and Mold Problem Demereckis
26 had experienced in his Washing Machine.

27 21. Demereckis has followed Bosch's supplemental directions and original
28 maintenance instructions, keeping the Washer's door open between groups of wash

1 cycles, removing the detergent drawer and placing it under running water or placing
2 it in a bleach/water solution, and using powder HE detergent. Despite these efforts,
3 Demereckis' Washer has transferred foul odors to clothing and other items run
4 through it, and required constant application of extraordinary care and attention.

5 **Defendant**

6 22. BSH Home Appliances Corporation is a Delaware corporation and
7 maintains its principal place of business at 5551 McFadden Avenue, Huntington
8 Beach, California 92649, where its Washing Machine design team, executive offices,
9 and sales, marketing, finance, logistics, information technology, human resources
10 and customer support departments are located. When class members of the proposed
11 Nationwide Class call the warranty service telephone number disseminated by
12 Defendant, they speak with BSH Home Appliances Corporation employees located
13 in Irvine, California, who as a pattern and practice deny Class members' warranty
14 claims.

15 23. BSH Home Appliances Corporation is a wholly-owned subsidiary of
16 BSH Bosch and Siemens Home Appliances Group based in Munich, Germany.
17 Bosch is the third largest manufacturer of "high-end" appliances and sells its
18 products in the United States under the Bosch, Siemens, Thermador and Gaggenau
19 brands. Bosch & Siemens Washing Machines are manufactured in New Bern, North
20 Carolina.

21 24. BSH stopped production of its 27" Machines at its New Bern, NC
22 facility at the end of 2011.

23 **JURISDICTION AND VENUE**

24 25. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2)
25 because the amount in controversy exceeds \$5,000,000, exclusive of interest and
26 costs, and this is a class action in which the members of the proposed Class and
27 Defendant are citizens of different states.

26. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant does substantial business in this district and is a resident of this judicial district, and a substantial part of the events or omissions giving rise to Plaintiffs' claims took place within this district. See attached as Exhibit 1, the declarations from Consumer Representatives Wentworth, Gibson, and Isabella regarding proper venue for this action.

FACTUAL BACKGROUND

27. Defendant is in the business of manufacturing, producing, distributing, and/or selling Washing Machines throughout the United States under the brand names Bosch and Siemens. The Washing Machines sold under both brands are substantially identical, and the Consumer Representatives are informed and believe both brands of the Washing Machines are and were manufactured in the same facilities.

28. Bosch manufactured, produced, and/or distributed Washing Machines for sale by its network of authorized dealers including several leading retailers in the United States, such as ABT, Best Buy, Lowe's, Pacific Sales, Sears, and other large retail chains. Bosch and Siemens model Washing Machines are sold at retail for between \$600 to over \$1500.

NON-FRAUD ALLEGATIONS REGARDING DEFENDANT'S VIOLATION OF THE UNFAIR PRONG OF THE UCL

29. The following allegations apply to Plaintiffs' claim that Defendant's conduct violated the unfair prong of the UCL. These allegations do not sound in fraud, and the requirements for pleading fraud do not apply to Plaintiffs' claim under the unfair prong of the UCL. Plaintiffs expressly disclaim any allegations that could be construed as sounding in fraud as applied to this claim, and those allegations expressly are not incorporated by reference in this section of complaint. Furthermore, the conduct complained of that gives rise to Plaintiffs' unfair-prong

1 claim is separate and apart from the course of conduct giving rise to Plaintiffs'
2 claims under the fraudulent prong of the UCL, as well as the CLRA and FAL.

3 30. Defendant's unfair conduct in violation of the unfair prong of the UCL
4 is Defendant's sale of Washing Machines that develop Mold Problems, even during
5 the warranty period.

6 31. Plaintiffs reasonably expected the Washing Machines to operate without
7 Mold Problems. This was a material consideration in Plaintiffs' purchasing
8 decisions. Simply put, Plaintiffs would not have purchased Washing Machines that
9 have Mold Problems and certainly would not have paid the amounts that they paid
10 for Machines that have Mold Problems. Plaintiffs did not receive the product that
11 they bargained for, namely a Washing Machine that does not develop Mold.
12 Washing Machines with Mold Problems are not worth as much as Washing
13 Machines without Mold Problems.

14 32. Plaintiffs also expected that the Washing Machines, which are front load
15 washers, are more efficient than top loading machines, which is supposed to justify
16 their significantly higher price. In fact, as further alleged herein, consumers must
17 regularly run extra hot-water cleaning cycles on the Machines when they are empty
18 in an attempt to remedy the Mold Problems, thereby negating any purported water
19 and energy efficiencies that they expected from the purported superior design and
20 efficiency of front-load washing machines.

21 33. The presence of mold and mildew in the Machines also poses a threat to
22 Plaintiffs' safety and to the safety of others which results in further economic loss
23 from the time that Plaintiffs purchased their Machines. (Plaintiffs' standing is not
24 predicated on a threat of future harm but on actual economic loss resulting from
25 purchasing the Machines. Further, Plaintiffs herein are not asserting claims for
26 personal injury, only economic injury resulting from overpaying for unsafe
27 machines. Inhaling and touching mold can cause allergic reactions, including
28 sneezing and skin rash. Allergic reactions to mold are common. Mold exposure can

1 also irritate the eyes, skin, nose, throat and lungs. Severe sufferers may endure
2 shortness of breath, tightening of the throat and even respiratory distress. Mold can
3 also cause other problems such as severe memory impairment, irritable bowel
4 syndrome and chronic fatigue. Plaintiffs paid for safe, Mold-free Washing
5 Machines, but instead received unsafe, Mold-forming Washing Machines. The
6 overpayment for the unsafe Machines constitutes further economic loss.

7 34. Consumer complaints and Defendants' own documents confirm the
8 existence of Mold Problems with the Machines as alleged below and attached to this
9 Complaint. Defendants' conduct satisfies the prerequisites for unfair conduct under
10 the UCL in that Defendant's practice offends an established public policy and/or is
11 immoral, unethical, oppressive, unscrupulous or substantially injurious to
12 consumers. Further, consumers' injuries are substantial; the injury is not
13 outweighed by any countervailing benefits to consumers or competition; and
14 consumers' injury is an injury that consumers themselves could not reasonably have
15 avoided. Defendants' conduct also significantly threatens or harms competition.

16 35. The injury to consumers is substantial, particularly because the
17 Machines are defective at the time of sale and developed Mold Problems even
18 during the warranty period. Plaintiffs paid hundreds of dollars for Washing
19 Machines that they would not otherwise have spent for washing machines that have
20 Mold Problems. Moreover, the presence of Mold Problems defeated the primary
21 purpose of the Washing Machines, which is to remove stains, odors and bacteria.

22 36. The injury to consumers is not outweighed by any countervailing
23 benefits to consumers or competition. Furthermore, any purported efficiency benefit
24 of Bosch's front-load design is not realized by consumers as they paid hundreds of
25 dollars more for the Washers than top-loaders at the outset, and then were forced to
26 pay to regularly run their Machines empty (as often as once per week) with the
27 additional cost of specialized cleaning agents (as much as \$3-4 per cycle when using
28 Affresh). Even if higher efficiency were achieved, consumers should not have to

1 endure Mold Problems as a trade-off for purported energy and water efficiencies.
2 Any purported benefits to consumers from the design of the Machines is negated by
3 the propensity of the Machines to develop Mold Problems and the Extraordinary
4 Actions required of consumers.

5 37. The injury to consumers is not an injury that consumers themselves
6 could not reasonably have avoided because consumers did not know about the Mold
7 Problems before they bought the Machines. Further, Defendants' recommended
8 Extraordinary Actions are ineffective and result in additional operating expenses
9 such as higher energy and water bills, as well as the cost of specialized cleaning
10 agents. Moreover, the source and situs of the Mold Problems (as alleged herein) are
11 in parts of the Machine that are not reasonably accessible to consumers.

12 38. Defendant's conduct also is immoral, unethical, oppressive and/or
13 unscrupulous given the evidence above that confirms the existence of Mold
14 Problems in the Washing Machines. In addition, it is unethical and oppressive to
15 charge a premium price for a product that fails of its essential purpose of washing
16 Clothes without the Machines developing Mold. Further, as alleged in detail below,
17 Defendant actually knew about the existence of Mold Problems with the Machines,
18 which renders Defendant's conduct particularly immoral, unethical, oppressive and
19 unscrupulous.

20 39. Defendant's conduct also offends established public policies concerning
21 consumer protection and class action litigation. The California Supreme Court has
22 found that "[p]rotection of unwary consumers from being duped by unscrupulous
23 sellers is an exigency of the utmost priority in contemporary society." *Vasquez v.*
24 *Super. Ct.*, 4 Cal. 3d 800, 808 (1971). Moreover, the public policy at the very core
25 of the class action mechanism is to overcome the problem that relatively small
26 recoveries do not provide the incentive for any individual to bring a solo action
27 prosecuting his or her rights. A class action solves this problem by aggregating the
28 relatively small potential recoveries into something worth someone's time and labor.

1 *Amchem Prods. v. Windsor*, 521 U.S. 591, 617 (1997) (quoting *Mace v. Van Ru*
2 *Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997)). California also has established a
3 public policy against allowing manufacturers to escape liability for placing defective
4 consumer products in the stream of commerce by imposing liability on them, and
5 subjecting them to penalties, under the implied warranty of merchantability by
6 operation of law under the Song-Beverly Act, Cal. Civ. Code § 1790 *et seq.*

7 40. Defendant's conduct also significantly threatens or harms competition.
8 But for Bosch's consumption of market share through the sale of defective Washing
9 Machines, other manufacturers of non-defective washing machines could enter the
10 market and increase consumer choice or otherwise benefit the consumer marketplace
11 by occupying a meaningful share of the market and being able to allocate greater
12 resources to research and development of better washing machines. Furthermore,
13 the sale of inefficient and defective Washing Machines that grow mold diminishes
14 the good will and reputation of the entire front-load washing machine market, and
15 drives consumers away from a market segment that could otherwise provide water
16 and energy savings for consumers, as well as municipalities. This is evidenced by
17 the entry of high-efficiency top loaders into the market in recent years by
18 manufacturers other than Bosch. Still more, by using Defective Parts, Bosch is able
19 to sell its Washing Machines at the lower end of the premium segment, thereby
20 taking business away from manufactures of washing machines who have opted not
21 to build defective washing machines.

22 **BOSCH'S OMISSIONS OF MATERIAL FACTS AT THE POINT OF SALE**
23 **ON LABELS ON THE WASHING MACHINES IN RETAIL STORES**
24 **WHERE THE MACHINES ARE SOLD**

25 41. Bosch fails to disclose to Plaintiffs, at the time of purchase, the material
26 facts that: 1) the Washing Machines' have defective parts and have been assembled
27 into a defective machine that has and have a high propensity to accumulate Biofilm
28 and develop Foul Odors and the Mold Problem, 2) the need for Extraordinary

1 Actions (defined below); and 3) the inevitable incurring of Undisclosed Additional
2 Operating Expenses (defined below).

3 42. Consumer Representatives now plead their material omission claims
4 with the requisite particularity to satisfy Rule 9(b) and incorporate all other
5 paragraphs by reference hereto. Plaintiffs expressly disclaim any claims for
6 affirmative misrepresentations and seek relief only for Bosch's omissions of material
7 fact, some of which are based on partial disclosures as explained below.

8
9 **WHO:**

10 43. BSH Home Appliances Corporation is the entity that fails to disclose
11 Material Fact (defined below) at the point of purchase to Plaintiffs.

12
13 **WHAT:**

14 44. Bosch fails to disclose Material Facts (defined below) at the time of
15 purchase. Bosch fails to disclose that the Washing Machines each have the
16 Defective Parts, as defined herein, and that even if consumers operate the Washing
17 Machines as instructed by Bosch the Defective Parts will cause Biofilm, the Foul
18 Odors and the Mold Problem to develop and be present in each Washing Machine
19 due to the Defective Parts in the Washing Machines. Bosch fails to disclose, at any
20 time prior to the consumers purchase of the machine, that it requires consumers to
21 periodically run extra bleach or vinegar and hot water cleaning cycles, wipe-down
22 the clothes basket and door bellows after each wash, and/or leave the door "ajar"
23 between washes (collectively hereinafter referred to as the "Extraordinary Actions")
24 in order to combat the development and accumulation of Biofilm, Mold Problem and
25 Foul Odors. The Extraordinary Actions require Washing Machine owners to pay for
26 the additional energy, water, and bleach (or other cleaning agents such as Affresh or
27 Tide Washing Machine Cleaner) needed to regularly run hot-water cycles in an
28 attempt to redress the effects of the Defects in the Washing Machines (the additional

1 cost for energy, water and bleach or other cleaning agents, to perform the
2 Extraordinary Actions is hereafter referred to as the “Undisclosed Additional
3 Operating Expenses”). Bosch labels the Washing Machines as “High Efficiency” on
4 the Machines (See Figures 2, 6, 8, 9, 12 and 13) and “Energy Star” ¹ compliant on
5 stickers or placards it places on or in the Washing Machines, but does not disclose
6 the fact that the Washing Machines require the Extraordinary Actions and
7 Undisclosed Additional Operating Expenses that render the Washing Machines
8 inefficient.

9 45. As to Bosch Sanitary Models (defined below) and Siemens ultraSense
10 models, Bosch makes partial representations through the label “XXTRA
11 SANITARY” (See Figures 1, 5, 12 and 14), and “Sanitary 170,” but fails to disclose
12 that the Machines are defective and cannot sanitize Clothes or the Machines
13 themselves. (The facts in paragraphs 47-48 of this Complaint are collectively
14 hereinafter referred to as the “Material Facts”).

15 **WHEN:**

16 46. Plaintiffs relied on Bosch’s omissions of Material Fact at the point of
17 sale. **Consumer Representative Gibson:** At the time of deciding to purchase a
18 Washing Machine from US-Appliance.com, on January 7, 2009, Ms. Gibson
19 researched, observed and examined the Washer online. She logged on to US-
20 Appliance.com and viewed the landing page for the Bosch Nexxt 800 model (see
21 Ex. 2). Through the US-Appliance.com Bosch Nexxt 800 landing page she clicked
22 on the hyperlink “Performance Details and Photos” (See Ex. 2). The “Performance
23 Details and Photos” hyperlink directed her web browser to the Bosch Nexxt 800
24 features website landing page at the URL www.bosch-

25 ¹ ENERGY STAR is a voluntary labeling program designed to identify and promote energy-efficient products through
26 a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy. Bosch tests its own
27 Washing Machines and submits its tests results to the U.S. Department of Energy who then applies a standard formula
28 to calculate the energy rating. The tests performed by Bosch do not take into account the empty-hot water and bleach
cycles that Bosch recommends Class members run to avoid or remedy the Mold Problem.

1 home.com/us?product_id=848&Page_Header=Bosch%20%20Key%20Features&hty
2 pe=2 (see e.g. Ex. 3).

3 47. On the Bosch landing page on bosch-home.com she observed and read
4 the partial representations “XXTRASANITARY – NSF Certified Eliminates 99.9%
5 of Bacteria,” “NSF Certified – Eliminates 99.9% of Bacteria,” “Exceeds Energy Star
6 2011 Guidelines – Uses only 151 KWh/yr.,” “Bosch Washers Exceed Federal
7 Energy Standards by up to 102%.” Through the Bosch Nexxt 800 landing page on
8 bosch-home.com she was able to view the Washer through interactive features she
9 read words and labels on the Machines. Ms. Gibson used this feature to observe the
10 labels “High Efficiency,” “High Care,” and “XXTRA SANITARY.”

11 48. Nowhere on the bosch-home.com website or on the Washer did Bosch
12 disclose that the washer had a high propensity to develop the Mold Problem, Foul
13 Odors, Biofilm, or that it required Extraordinary Actions (defined below) that would
14 cause her to incur Undisclosed Additional Operating Expenses.

49. The following Figures depict the labels Ms. Gibson observed at the time of purchasing her Washing Machine:

Figure 1: Right Side of Consol/Control Panel

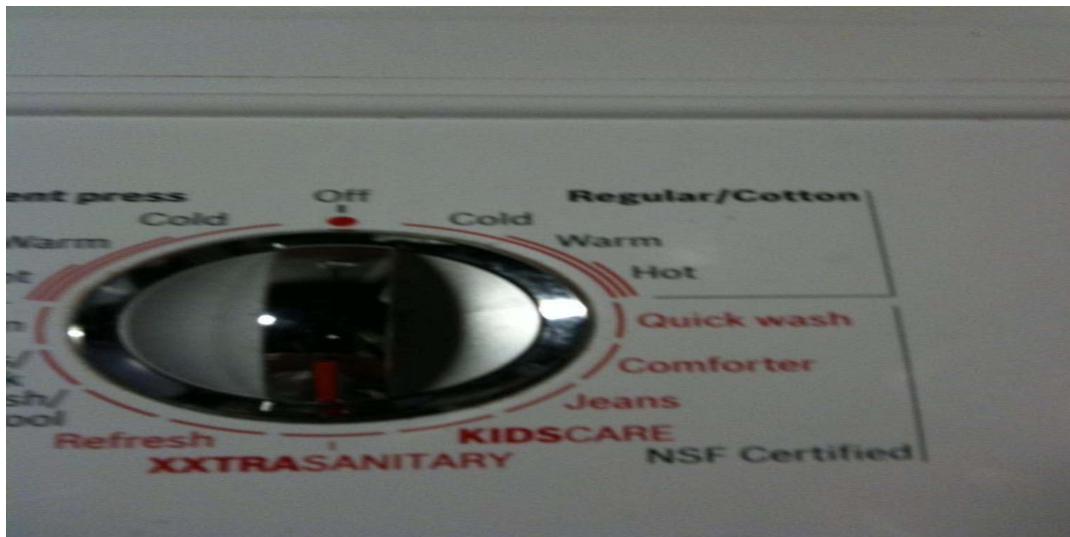


Figure 2: Left Side of Consol/Control Panel



Figure 3: Right Side of the Consol/Control Panel



Figure 4: Warning Labels on Door Frame



1 **50. Consumer Representative Isabella.** Ms. Isabella observed and
2 examined a Washer at Showcase Furniture on September 19, 2007 at which time she
3 specifically observed and read labels on the Washer including “High Efficiency,”
4 “High Care” the warning labels, as well as the recommendation to use “High
5 Efficiency Detergent.” Nowhere on the Washing Machine did Bosch disclose that
6 the washer had a high propensity to develop the Mold Problem, Foul Odors, Biofilm,
7 or that it required Extraordinary Actions that would cause her to incur Undisclosed
8 Additional Operating Expenses.

9 **51.** The following Figures depict the labels Ms. Isabella observed at the time
10 of purchasing her Washing Machine:

11
12 **Figure 5: Right Side of Control Panel**



Figure 6: Dispenser Lid/Left Side of Consol/Control Panel



Figure 7: Warning Labels on Door Frame



PROVISIONAL FOURTH CONSOLIDATED AMENDED COMPLAINT

Case No. SACV10-711 CJC (ANx)

52. **Consumer Representative Demereckis.** Mr. Demereckis observed and examined a Washer at Grant's in Orland Park, IL on or about May 22, 2009, including opening the door, as well as the detergent dispenser lid. While at Grant's for the purpose of shopping for a new washer and dryer, Mr. Demereckis observed and read labels on the Washer itself, including the phrase "High Efficiency," the Woolite label, the recommendation to use "High Efficiency Detergent," as well as a yellow U.S. Department of Energy "EnergyGuide" label on or in the Machine. Nowhere on the Washing Machine that Mr. Demereckis observed at Grant's did Bosch disclose that the Washer had a high propensity to develop the Mold Problem, Foul Odors, Biofilm, or that it required Extraordinary Actions that would cause him to incur Undisclosed Additional Operating Expenses.

53. The following Figures depict the labels Mr. Demereckis observed at the time of purchasing her Washing Machine:

Figure 8: Console Overview



Figure 9: Dispenser Lid Open

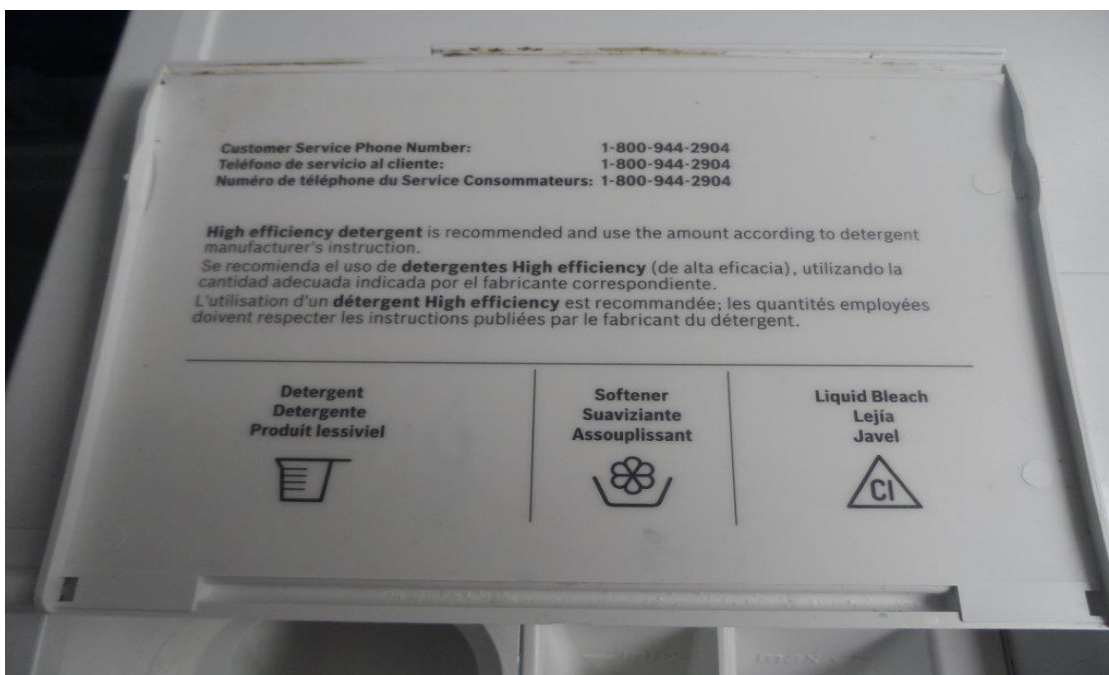


Figure 10: Labels on Door Frame



Figure 11: Control Panel



54. **Consumer Representative Wentworth.** Ms. Wentworth observed and examined a Washer at Pacific Sales on February 20, 2008 at which time she specifically observed labels on the Washer including “High Efficiency,” “High Care” the warning labels, as well as the recommendation to use “High Efficiency Detergent.” Nowhere on the Washer did Bosch disclose that the washer had a high propensity to develop the Mold Problem, Foul Odors, Biofilm, or that it required Extraordinary Actions (defined below) that would cause her to incur Undisclosed Additional Operating Expenses.

55. The Following figures depict the labels Consumer Representative Wentworth observed when deciding to purchase her Washing Machine:

Figure 12: Console/Control Panel Overview



Figure 13: Detergent Dispenser Lid on Left Side of Control Panel



Figure 14: Right Side of Control Panel



Figure 15: Underside of Detergent Dispenser Lid



Figure 16: Warning Labels on Door Frame



WHERE:

56. Defendant omits the Material Facts on labels located on the Washing Machines themselves in retail stores where the Washing Machines are sold as specifically alleged herein for Consumer Representatives Gibson, Isabella, Demereckis and Wentworth in the immediately preceding paragraph. Bosch also omits the Material Facts on its website bosch-home.com as alleged herein for Consumer Representative Gibson.

WHY and HOW:

57. All the Material Facts are material because a reasonable consumer would consider them important when deciding whether to buy a Washing Machine. Had

1 Bosch disclosed the Material Facts, Consumer Representatives Gibson, Isabella,
2 Demereckis and Wentworth would have acted differently by not buying the
3 Machines or not paying as much for the Machines. Each one of Bosch's omissions
4 of Material Fact are materially false and misleading:

5 **58. Omission of the Defective Parts:** the omission of the material fact that
6 the Machines contain Defective Parts is false and misleading because noticeable
7 and/or sufficient levels of bacteria and/or mold and bacteria and mold spores remain
8 in the Clothes and the Washing Machines after use as evidenced by the Biofilm,
9 Foul Odors, and Mold Problem that develop and accumulate in the Washing
10 Machines and impregnate the Clothes washed in them and laboratory testing of swab
11 samples taken from the Wentworth and Demereckis Machines. Attached as
12 Exhibit 4, are testing results of swab samples taken from the Wentworth and
13 Demereckis Machines which demonstrate fungal growth in both Machines. Had
14 Bosch not concealed the Defective Parts and their deleterious effects, Plaintiffs
15 would not have purchased the Washing Machines. Bosch had a duty to disclose the
16 Defective Parts and their expected deleterious and effects because it was in exclusive
17 possession of the knowledge regarding the existence of the Defective Parts and their
18 deleterious effects and made incomplete representations of the Washing Machine's
19 performance through labels such as "Xxtra Sanitary" while concealing the Defective
20 Parts and the Biofilm, Mold Problem and Foul Odors that result from them. Bosch
21 also had a duty to disclose the Defective Parts because it knew that they cause the
22 Mold Problem which is material information directly related to safety and health as
23 alleged herein. **Extraordinary Actions, Undisclosed Additional Operating**
24 **Expenses, "High Efficiency," and "Energy Star" Omissions:** The partial
25 representations of "High Efficiency" and Energy Star gave rise to a duty to disclose
26 the need for Extraordinary Actions and resulting Undisclosed Additional Operating
27 Expenses (defined below), material facts that Bosch suppressed. The "High
28 Efficiency" and "Energy Star" representations were known to be false by Bosch

1 when they were made because Bosch recommends to consumers only after the point
2 of purchase the material fact that they must regularly run extra empty hot-water
3 cycles in an attempt to ameliorate the Biofilm, Foul Odors, and the Mold Problem in
4 the Washing Machines. The omission of this information is false and misleading
5 because when Washing Machine owners run the extra hot-water cycles, they lose the
6 water and electricity savings that Bosch represented were the benefits and
7 characteristics of owning its Energy Star-compliant Washing Machines. Bosch
8 concealed its knowledge that consumers must regularly run extra empty hot-water
9 cleaning cycles for its Washing Machines to operate as Bosch intends, which cause
10 them to be inefficient. Bosch was also required to disclose the Extraordinary Action
11 of leaving the door “ajar” between washes as it relates directly to safety of the
12 Washing Machines as more fully alleged below.

13 59. Plaintiffs purchased the “Energy Star” Washing Machines on the basis
14 that they would save water and energy. In reality, at the recommendation of Bosch
15 and independently, Class members have to perform Extraordinary Actions and incur
16 Undisclosed Additional Operating Expenses to combat the Mold Problem, foul
17 Odors, and/or Biofilm, contrary to Bosch’s express representations that the Washing
18 Machines would lead to water and energy savings.

19 60. **XXTRA SANITARY.** Bosch makes the partial representation that the
20 Machine is capable of sanitizing Clothes, but does not disclose that the Machines
21 have Defective Parts that cause the Mold Problem and impregnate Clothes with
22 mold, mildew, and Foul Odors even when the XXTRA SANITARY cycle is used on
23 a regular basis. A reasonable consumer would not knowingly purchase an appliance
24 designed to clean Clothes that actually makes Clothes smell like mold and mildew.

25 61. Defendant was obliged to disclose the Material Facts because:
26 1) Defendant had exclusive knowledge of the Material Facts not known to Plaintiffs
27 and the Class, since only Defendant had exclusive access to the aggregate data from
28 its retailers, its own tests, and complaints from its customers; 2) Defendant actively

1 concealed and suppressed the Material Facts from Plaintiffs by knowing and not
2 warning of the Defective Parts and their effects at the time of purchase and by
3 performing warranty and/or repair work that it knew would not cure the Defective
4 Parts or stop their effects, all of which was unknown to Plaintiffs, and by
5 recommending remedies to complaining consumers that it knew would not cure the
6 Defective Parts or resulting problems thereby causing damages; and/or 3) Defendant
7 made partial representations through labels on its machines such as Energy Star,
8 High Care, High Efficiency, and Xxtra Sanitary and Sanitary 170. As a result of
9 Bosch's concealment of the Extraordinary Actions and the resulting Undisclosed
10 Additional Operating Expenses, Washing Machine owners were not provided
11 material information, known by Bosch, before they decided which brand of washing
12 machine to buy. The Washing Machines are worth less than the price Plaintiffs paid
13 for them, as ownership and operation of the Washing Machines will cost more
14 and/or require more maintenance than the ownership and operation of comparable
15 non-defective washing machines, the Machines fails to achieve their primary
16 purpose of cleaning Clothes, and the value of the Washing Machines is diminished.

17 18 **BREACH OF IMPLIED WARRANTIES**

19 62. As part of the sale of each Washing Machine, Defendant warranted that
20 the defective Machines were of merchantable quality fit for the ordinary purpose for
21 which washing machines are used, *i.e.*, to clean Clothes, make them smell appealing,
22 and clean the Washing Machines themselves. In fact, the Machines are not
23 merchantable because they have the Defective Parts; whose presence in the
24 Machines causes them to develop Biofilm, Foul Odors, the Mold Problem, and
25 damages and devalues the Clothes that go through wash cycles in the Washing
26 Machines.
27
28

**BOSCH'S POST-SALE RECOMMENDED CARE DIRECTIONS
ACCELERATE THE BREAK-DOWN OF THE MACHINES AND THE
REPAIRS IT MADE TO THE MACHINES DID NOT REMOVE THE
DEFECTIVE PARTS.**

63. Among the Extraordinary Actions that Bosch recommends its customers perform is wiping dry the door gasket after every wash and/or using a water and bleach mixture for the purpose of removing Biofilm and bioorganic material that develop on and in the rubber door gasket material. However these recommendations accelerate the deterioration of the door gasket by removing a lubricant that is on the door gasket. Deteriorated rubber door gaskets result in inadequate sealing of the door; this, in turn results in consumers having to pay additional money to replace door gaskets more frequently than they would if they did not have to wipe them, as directed by Bosch, with bleach mixtures to mitigate the Biofilm, Foul Odors and Mold Problem.

64. As explained above, Bosch also recommends that complaining Class members run empty cycles of bleach and hot water to try to rid their Machines of Biofilm, Foul Odors, and the Mold Problem. However, hot water and/or bleach may only kill bacteria and mold with which they come in contact, and will not kill all mold and/or bacteria spores. Because mold and bacteria establish themselves and survive in parts of the Washing Machines that do not come into contact with water, or in contact with insufficient quantities of hot bleach water, to kill the Biofilm, mold, bacteria and other organic material that has taken root in the Machines as a result of the Defective Parts (but receive moisture from the humid air or condensation inside the Washing Machines), and the spores of some or all of these common household organisms are very resistant to bleach and hot water, the Foul Odors and Mold Problem cannot be eliminated by Machine Owners operating their Machines by running empty cycles of bleach and hot water.

65. Bosch recommends to Plaintiffs that they leave the Washing Machine door ajar between washes to reduce the incidence and affects of Biofilm and the

1 Mold Problem. Not only does this recommendation not remove or repair the
2 Defective Parts, it does not solve or prevent Biofilm, Foul Odors and the Mold
3 Problem and exposes children and pets to injury. Indeed, the Consumer Product
4 Safety Commission is investigating the death of a 4 year-old girl who climbed into a
5 front load machine that her younger brother turned on. In addition, LG, another
6 manufacturer of front load washing machines, has recalled certain of its front load
7 models in Korea to adjust the door lock so that the washer door can be opened from
8 the inside following the death of a 7 year-old boy who suffocated inside an LG
9 washer.

10 66. Bosch was in exclusive possession of information about the Defective
11 Parts; that the Defective Parts would cause Biofilm, the Foul Odors, the Mold
12 Problem, and the Undisclosed Additional Operating Expenses that Class Members
13 would expend; all of which were material to Plaintiffs' decisions to buy the Washing
14 Machines. Bosch had a duty, under the circumstances, to disclose the Defective
15 Parts, Biofilm, the Foul Odors, the Mold Problem and the Undisclosed Additional
16 Operating Expenses to Plaintiffs prior to completing their purchases. Nevertheless,
17 Bosch has failed and refused to warn its customers, prior to the completion of their
18 purchase, of the serious Defective Parts in the Washing Machines, or to warn them
19 about Biofilm, the Foul Odors, the Mold Problem and Undisclosed Additional
20 Operating Expenses they will incur and pay for as a result of the Defective Parts.
21 Instead, Bosch has kept silent while uninformed consumers purchased and continue
22 to purchase the defective Washing Machines.

23 67. Bosch has also refused, and continues to refuse, to modify the Defective
24 Parts, or how the Machines' parts are uniformly assembled into a working integrated
25 product, so that the Machines do not produce Biofilm, the Foul Odors and the Mold
26 Problem and cause their owners to pay for the Undisclosed Additional Operating
27 Expenses. Bosch could cure the Mold Problem by not using defectively
28 manufactured parts, which do not achieve Bosch's intent of their design, which is to

1 result in the elimination and removal of all dirty wash water after a wash cycle is
2 completed and reducing the moisture level in the Machines, after completion of a
3 wash cycle, such that the assembled and integrated parts of the Machine do not
4 develop Biofilm, the Foul Odors and the Mold Problem or cause their owners to pay
5 for the Undisclosed Additional Operating Expenses. In light of Bosch's knowledge
6 of the serious results caused by continuing to assemble Washing Machines with the
7 Defective Parts Bosch knew, or should have known, when it sold Washing Machines
8 to consumers that they had a value that was substantially less than the Bosch
9 recommended retail purchase price and substantially less than the price range at
10 which Bosch was informed or believed third parties would sell their Machines.

11 68. The presence of the Defective Parts substantially reduce the Washing
12 Machines' value, in that: a) Bosch sold the Washing Machines without the intent to
13 sell them as advertised; b) the Washing Machines do not have uses, benefits and
14 characteristics Bosch represented they had, including the most basic use, benefit and
15 characteristic; e.g. that the Washing Machines would clean Clothes placed in them
16 during a wash cycle and would produce clean Clothes that did not smell offensive,
17 noxious or foul; and c) the Washing Machines are not of the standard, quality or
18 grade Bosch represented.

19 69. Further, Plaintiffs also reasonably expected that the Washing Machines
20 would not require extensive and expensive repairs so as to eliminate and cease the
21 recurrence of Biofilm, the Mold Problem and Foul Odors as a result of the inclusion
22 of Defective Parts into the assembled Machines, which fact was known to Bosch
23 before and at the time the Washing Machines were sold to Plaintiffs. If Bosch had
24 not misrepresented and concealed material information regarding the presence of
25 Defective Parts incorporated into the Washing Machines, Plaintiffs would not have
26 purchased the Washing Machines at premium prices on the terms offered. As such,
27 Defendant's acts and practices are separately and discretely each of the following:
28 unfair, unlawful, fraudulent, and deceptive.

1 70. Bosch also has profited, either directly or indirectly, by concealing the
2 inclusion of the Defective Parts into the completed and assembled Washing
3 Machines because Bosch has been able to convince a large number of consumers to
4 purchase the Washing Machines, and to pay Bosch directly for repair services and
5 replacement parts (from which Bosch earns a profit), such as new door gaskets, to
6 try to address the effects of the incorporation of the Defective Parts; which include
7 Biofilm accumulation, the presence of Foul Odors, the Mold Problem and paying
8 Undisclosed Additional Operating Expenses *even though Bosch has no cost-effective*
9 *way to remove and replace the Defective Parts*, and knows that replacement parts it
10 offers the Class do not remove all of the Defective Parts and therefore even after
11 repair by Bosch, the Machines continue to produce additional Biofilm, the Mold
12 Problem, Foul Odors and unclean and offensive smelling Clothes.

13 71. Woolite is a fabric softener, which Bosch recommended be used. See
14 e.g. a Woolite label shown on Figure 17 below on Consumer Representative Nancy
15 Wentworth's Bosch Nexxt DLX Washing Machine. However, after the Machines
16 were sold, Bosch states that using fabric softeners in the Machines causes the
17 development of Biofilm, the Mold Problem, Foul Odor and Clothes present in the
18 Machine during a wash cycle to emit noxious and offensive odors.

19
20
21
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Figure 17: Woolite Label on Bosch Nexxt DLX Washing Machine



Bosch's Reckless Disregard of the Defective Parts and Mold Problem

72. Bosch is aware that it incorporated Defective Parts into the assembled Washing Machines it sold to the Class Members, and that the Defective Parts cause the accumulation of Biofilm and the development of Foul Odors and the Mold Problem, and Class Members to pay Undisclosed Additional Operating Expenses, and has been aware of this information since 2004.

73. The Consumer Representatives and many Class members have alerted Defendant to the presence of Biofilm, Foul Odors, and the Mold Problem by complaining to Defendant directly and/or to Defendant's authorized retailers and service representatives and/or through the Bosch or Siemens internet web sites.

74. Furthermore, the Internet is replete with references and complaints regarding the Washing Machines that confirm that a) Class Members have the

Defective Parts in their Machines and that b) the Defective Parts cause the development and presence of Biofilm, the Mold Problem, Foul Odors. Representative relevant excerpts from a sampling of these complaints are set forth below:

Source	Comments
<p>fixya.com</p> <p>Nov 24, 2008</p> <p>http://www.fixya.com/support/t1288980-bosch_nexxt_series_washing_machine_front</p> <p>(last accessed 3/31/2010)</p>	<p>Our front loading washer has a terrible mold issue in the front gasket. The water doesn't drain completely from the gasket area (the holes are roughly 3/4" above the bottom of the inside front of the gasket) and after each wash I wipe dry the remaining water. I cannot even close the door between washings, it must be left ajar. We were away for a week and my husband had closed the door...needless to say the gasket was covered in mold! Disgusting! I even have to wipe it down with bleach periodically and that does not even remove all the mold. I have read on another website other individuals with this problem, but no remedy. Have had the techs from the installer out and they do not know what to do to solve this. Ongoing problem for 2 years and I am sick of it. Please help. Have spoken to Bosch reps who say they have not heard of this problem, just referenced me to another repair company.</p>
<p>consumeraffairs.com</p> <p>November 24, 2009</p> <p>http://www.consumeraffairs.com/homeowners/bosch_p4.html</p> <p>(last accessed 3/31/2010)</p>	<p>We bought a new Bosch front loading washing machine in 2005 and have problems with it since the beginning. The gasket and spring would pop off and we have had mold build up in the machine and front window and now everything smells like mold.</p>
<p>Epinions.com</p> <p>Nov 22 2007</p> <p>http://www0.epinions.com/review/pr-Siemens_ultraSenseT</p>	<p>I Have a Siemens washer model WFXD5200. I have had this washer for about 2 years. I have had a problem trying to keep the mold from growing on the door seal. The washer holds water in the door gasket. This water will sit in the door seal and give the mold a place to grow. The mold will create an unpleasant smell that can affect the scent of your clean laundry if left in the machine when washing is</p>

<p>3 _7_Cu_Ft_15_Progra m _Super_Capacity_ Washer_White_ WFXD5200UC /content_40831061568 4 (last accessed 3/31/2010)</p>	<p>finished. I have tried to dry the water in the seal and also leave the door open to let door area air dry. I have been unable to resolve this problem and am not pleased with this washing machine. I will be contacting the manufacturer to see what they will do to remedy this problem. I would like to know if this is common with other buyers and if a solution was offered by the company. I have tried to go to the web site and talk to customer service to see if any solution was available but the web site is not available. I paid around \$1,000 dollars for this machine and feel like this mold problem is a factory defect in the door seal.</p>
<p>consumeraffairs.com March 27, 2010 http://www.consumeraffairs.com/homeowners/bosch.html (last accessed 3/31/2010)</p>	<p>We purchased a Bosch Next 700 front loading washing machine. We have had to replace gasket after gasket. All tear at same place. Now we have mold. Why is no one doing anything about these poorly constructed washers? Water leakage causing mold. Water danger near electric circuits etc...</p>

75. As a result of the flurry of consumer complaints regarding the Defective Parts that Defendant would not repair or remove and replace, and as a testament to the widespread nature of the problem, several entrepreneurs created and marketed products designed to treat, eliminate and/or minimize the Foul Odors and Mold Problems caused by the Washing Machines' Defective Parts. These products include SmellyWasher, NuFreshNow, Tide Washing Machine Cleaner, and Affresh. Due to the widespread and intractable nature of the Foul Odors and the Mold Problem once they have manifested, these entrepreneurs have sold tens of thousands, if not millions, of their products to consumers. None of these products fix or replace the Defective Parts that cause Biofilm, the Foul Odors, the Mold Problem and Machine owners to pay the Undisclosed Additional Operating Expenses. Indeed,

1 these products are but one of the Undisclosed Additional Operating Expense Class
2 Members pay.

3 76. Defendant failed to adequately inspect, prototype, and test the Defective
4 Parts before including them in the assembled Washing Machines.

5 77. Before Defendant began selling the Washing Machines in the United
6 States, Defendant knew, or was reckless in not knowing, that: (a) the Defective Parts
7 were defective; (b) the assembled Machines, which incorporated the Defective Parts
8 and operating controls were, as an assembled and integrated product, defective;
9 (c) the assembled and integrated Machines were defective in the workmanship and
10 manner in which they were incorporated into an integrated finished product; and
11 (d) they were not of merchantable quality or fit for their ordinary purpose.

12 78. Plaintiffs are informed and believe Defendant's employees, officers and
13 agents, knew, discussed and acknowledged to each other that the Biofilm, Foul
14 Odors, and the Mold Problem resulted from, inter alia, the inclusion Defective Parts
15 into the Washing Machines and the incorporation and assembly of the Defective
16 Parts and operation controls into the a finished integrated washing machine.

17 79. Despite having repeated notice that there were Defective Parts in its
18 Washing Machines that the presence of Defective Parts in the Washing Machines
19 causes the accumulation of Biofilm, the Foul Odor and the Mold Problem, and that
20 the reasonable expectations of consumers, created by Defendant's marketing of its
21 Washing Machines is that the Machines would not develop Biofilm, the Foul Odor
22 or the Mold Problem or would require Extraordinary Actions or Undisclosed
23 Additional Operating Expenses, Defendant has engaged and continues to engage in
24 the following routine, albeit, wrongful course of conduct, where Defendant:

25 a) Sells Washing Machines that have the Mold Problem in the
26 premium segment of the washing machine market;

27 b) Designs parts, and integrated and assembled finished Washing
28 Machines, which it in turns sells which have Defective Parts that cause Biofilm, the

1 Foul Odors and the Mold Problem and require Machine owners to pay Undisclosed
2 Additional Operating Expenses;

3 c) Fails to disclose that the Washing Machines have the Defective
4 Parts within them that cause Biofilm, the Foul Odors and the Mold Problem and
5 require Machine owners to pay Undisclosed Additional Operating Expenses;

6 d) Continues to represent the Washing Machines as “High
7 Efficiency” and “High Care” without disclosing material facts, such as that Machine
8 owners will have to take Extraordinary Actions and pay Undisclosed Additional
9 Operating Expenses.

10 e) Continues to represent expressly or by necessary implication that
11 the Washing Machines that Plaintiffs purchased were dependable, cost effective, and
12 would provide outstanding cleaning and performance as washing machines when it
13 knew that these statements were false;

14 f) Continues to manufacture, market, advertise, distribute, and sell
15 the Washing Machines to consumers when it knew or should have known the
16 Machines were not dependable and would not withstand normal operation;

17 g) Fails to disclose to Plaintiffs the substantial risk of Washing
18 Machine failure;

19 h) Fails to disclose the Defective Parts or the defective
20 workmanship that results in an integrated defective finished product;

21 i) Fails to disclose that many Washing Machine owners reported to
22 Bosch that when using the Machine as it directed, their Machines developed Biofilm,
23 the Foul Odors, and the Mold Problem (or that it’s attempts to stop the presence of
24 Biofilm, the Mold Problem or Foul Odors did not include replacing all of the
25 Defective Parts; and therefore its repair efforts were unsuccessful and futile);

26 j) Fails to implement a recall or repair program to adequately
27 announce to Plaintiffs the presence of the Defective Parts, that the Machines have a
28 high propensity to develop Biofilm, the Foul Odors and the Mold Problem and that

1 Machine owners will have to pay Undisclosed Additional Operating Costs caused by
2 the Defective Parts and defective Machines and fails to provide, without charge to
3 Plaintiffs, an effective solution to a) repair the Defective Parts, b) replace the
4 Defective Parts with non-defective parts or c) stop the Machines from developing
5 Biofilm, the Mold Problem or Foul Odors;

6 k) Fails to take action to correct its concealment of material
7 information or false or misleading implied or express representations about the use,
8 benefits, characteristics, standard, quality, grade and performance of its Washing
9 Machines; and

10 l) Fails to disclose that despite following its recommended actions
11 for the operation of the Washing Machines found within the Defendant's "Operating
12 Instruction" manual, the Washing Machines will develop Biofilm, the Foul Odors,
13 the Mold Problem and Plaintiffs will pay Undisclosed Additional Operating
14 Expenses.

15 80. As a result of Defendant's deceptive conduct and concealment of
16 material information about its Washing Machines, as well as Defendant's other acts
17 and omissions described in this Complaint, Defendant has caused Plaintiffs to suffer
18 injury as a result of the Defective Parts it incorporated into the assembled and
19 finished Washing Machines, including, but not limited to:

20 a) Plaintiffs overpaid for a defective product;

21 b) The value of Plaintiffs' Machines is less than it would have been,
22 if the Washing Machines did not have the Defective Parts; and

23 c) Plaintiffs unknowingly spent money for futile repair attempts of
24 their Washing Machines, and other purported remedies, which money they would
25 not have spent but for the presence of the Defective Parts, Defendant's concealment
26 of material information about the Washing Machines and the efficacy of the
27 Extraordinary Actions.

1 81. If Plaintiffs had known that their Washing Machines had Defective
2 Parts, that would cause the Washing Machines to develop Biofilm, the Mold
3 Problem and, Foul Odors and require them to pay Undisclosed Additional Operating
4 Expenses, they would not have paid the significant sums of money that they paid for
5 the Washing Machines.

6
7 **CLASS ACTION ALLEGATIONS**

8 82. Dennis Demereckis, Beverly Gibson, Trish Isabella, and Nancy
9 Wentworth bring this action on behalf of themselves and all others similarly situated
10 as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

11 83. The class which the Consumer Representatives seek to represent are
12 defined as follows:

13 A class consisting of all original purchasers who are “consumers”
14 within the meaning of Cal. Civ. Code § 1761(d) residing in the United
15 States who purchased, not for resale, a Bosch or Siemens 27”
16 Horizontal Axis/Front-Loading Automatic Clothes Washers, including,
17 but not limited to, Bosch Nexxt and Vision, and Siemens ultraSense
18 models (the “Nationwide Class”).

19
20 84. In addition to, and in the alternative to the claims asserted on behalf of
21 the Nationwide Class, Consumer Representative Wentworth also brings this action
22 on behalf of a subclass consisting of all original purchasers who are “consumers”
23 within the meaning of Cal. Civ. Code § 1761(d) who purchased, not for resale, a
24 Bosch or Siemens 27” Horizontal Axis/Front-Loading Automatic Clothes Washers,
25 including, but not limited to, Bosch Nexxt and Vision, and Siemens ultraSense
26 models (the “California Subclass”).

27 85. In addition to, and in the alternative to the claims asserted on behalf of
28 the Nationwide Class, Consumer Representative Demereckis also brings this action

1 on behalf of a subclass consisting of all original purchasers who purchased, not for
2 resale, a Bosch or Siemens 27” Horizontal Axis/Front-Loading Automatic Clothes
3 Washers, including, but not limited to, Bosch Nexxt and Vision and Siemens
4 ultraSense models (the “Illinois Subclass”).

5 86. In addition to, and in the alternative to the claims asserted on behalf of
6 the Nationwide Class, Consumer Representative Gibson also brings this action on
7 behalf of a subclass consisting of all original purchases who purchased, not for
8 resale, a Bosch or Siemens 27” Horizontal Axis/Front-Loading Automatic Clothes
9 Washers, including, but not limited to, Bosch Nexxt and Vision, and Siemens
10 ultraSense models (the “Maryland Subclass”).

11 87. In addition to, and in the alternative to the claims asserted on behalf of
12 the Nationwide Class, Consumer Representative Isabella also brings this action on
13 behalf of a subclass consisting of all original purchasers who purchased, not for
14 resale, a Bosch or Siemens 27” Horizontal Axis/Front-Loading Automatic Clothes
15 Washers, including, but not limited to, Bosch Nexxt and Vision, and Siemens
16 ultraSense models (the “New York Subclass”).

17 88. The California Subclass, Illinois Subclass, Maryland Subclass, and New
18 York Subclass are referred to collectively herein as the “Subclasses.”

19 89. Excluded from the Nationwide Class, and Subclasses, are (i) Defendant,
20 any entity in which Defendant has a controlling interest or which has a controlling
21 interest in Defendant, and Defendant’s legal representatives, predecessors,
22 successors and assigns; (ii) governmental entities; (iii) Defendant’s employees,
23 officers, directors, agents, and representatives and their family members; and (iv) the
24 Judge and staff to whom this case is assigned, and any member of the Judge’s
25 immediate family.
26
27
28

**CALIFORNIA'S SUBSTANTIVE LAWS APPLY TO THE PROPOSED
NATIONWIDE CLASS**

90. California's substantive laws apply to the proposed Nationwide Class, as defined herein, because Plaintiffs properly bring this Complaint in this District.

91. California's substantive laws may be constitutionally applied to the claims of Plaintiffs and the Nationwide Class under the Due Process Clause, 14th Amend., § 1, and the Full Faith and Credit Clause, Art. IV., § 1, of the U.S. Constitution. California has significant contacts, or a significant aggregation of contacts, to the claims asserted by each Consumer Representative and all Class members, thereby creating state interests that ensure that the choice of California state law is not arbitrary or unfair.

92. Defendant's United States headquarters and principal place of business is located in California. Bosch also owns property and conducts substantial business in California, and therefore California has an interest in regulating Defendant's conduct under its laws. Defendant's decision to reside in California and avail itself of California's laws renders the application of California law to the claims herein constitutionally permissible.

93. California is also the location where Nancy Wentworth and a significant number of Class members were injured by virtue of the misconduct alleged herein. Nancy Wentworth resides in California and bought her Washing Machine in California. A substantial number of members of the proposed Nationwide Class also reside in California and bought Bosch Machines in California.

94. California is also the State from which Defendant's misconduct emanated and from which it disseminated its omissions. This conduct similarly injured and affected the Consumer Representatives and Class members residing in other states of the United States. For instance, Defendant's marketing efforts relating to the Washing Machines were created and orchestrated from its headquarters in

1 California. More specifically, California has the following significant contacts to the
2 claims of Plaintiffs and Class members:

3 a) Defendant's California office serves as the headquarters for its
4 washing machine design team, as well as marketing, sales, and customer support
5 departments in the United States and provides all sales support;

6 b) Upon information and belief, all corporate decisions regarding
7 the Washing Machines, and the representations and acts of concealment which are
8 the subject of this lawsuit were directed by, or disseminated from, Bosch
9 representatives working in California or directly reporting to superiors situated in
10 California;

11 c) Defendant's employees who were involved in and are
12 knowledgeable about the marketing and advertising of Bosch's Machines, executive
13 offices, and sales, marketing, finance, logistics, information technology, human
14 resources and customer support departments are located in California;

15 d) When members of the proposed Nationwide Class call the
16 warranty service telephone number listed on the Warranty, they speak with
17 Defendant's employees located at its Irvine, California headquarters who regularly
18 deny Class members' warranty claims; and

19 95. The application of California's laws to the Nationwide Class is also
20 appropriate under California's choice of law rules because California has significant
21 contacts to the claims of the Consumer Representatives and the proposed
22 Nationwide Class, California has a greater interest in applying its laws here than any
23 other interested states, and California's interests would be more impaired if other
24 states' laws were applied instead of California's.

25 96. In the alternative, the Court may apply the substantially similar
26 consumer protection laws of the 50 states and the District of Columbia.

27 97. This action has been brought and may properly be maintained as a class
28 action, pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure

1 because there is a well-defined community of interest in the litigation and the
2 proposed class is easily ascertainable:

3 a) Numerosity. The Washing Machines were sold and distributed by
4 Defendant throughout the United States. The Consumer Representatives are
5 informed and believe that the proposed putative Class is made-up of tens of
6 thousands of customers throughout the United States.

7 b) Common Issues Exist and Predominate. Common questions of law
8 and fact exist as to all members of the Class and predominate over any questions
9 which affect only individual members of the Class. The Washing Machines all have
10 the Defective Parts and have universally and uniformly caused the development of
11 Biofilm, the Mold Problem and Foul Odors; as well as caused each Class Member to
12 pay Unexpected Operating Costs; the Washing Machines do not differ in any
13 manner that is relevant to the Consumer Representatives' allegations of Defect Parts,
14 and the damage and harm caused thereby. The Consumer Representatives allege
15 herein in greater detail that the Machines all have the same Defective Parts and that
16 the finished integrated Washing Machines were defective when their assembly was
17 completed, when they left Defendant's possession and control, and as they now exist
18 and are being used throughout the United States. There is a well-defined community
19 of interest in the questions of law and fact involved and that affect Plaintiffs who
20 purchased the Washing Machines, and they all suffer from the same Defective Parts
21 and the defective Washing Machine as it was assembled and sold by Defendant.
22 These questions of law and fact predominate over questions that affect only
23 individual class members.

24 The common questions of law and fact include, without limitation:

25 (1) Whether the Washing Machines' Defective Parts are
26 defective;

27 (2) Whether the Washing Machines, given that they were
28 assembled with Defective Parts are a defective finished product;

(3) Whether Defendant knew and/or recklessly disregarded the fact that the Washing Machines were and are defective;

(4) Whether Defendant concealed, and failed to disclose to the Class, material facts from its labels, communications and disclosures to Plaintiffs regarding the Defect Parts, which are present in all of Defendant's Washing Machines;

(5) Whether Defendant has engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in connection with the sale of the Washing Machines;

(6) Whether Defendant violated California, and in the alternative, Illinois, Maryland, and New York, consumer protection statutes;

(7) Whether Defendant breached the implied warranty of merchantability under NY UCC § 2-314 and the Song-Beverly Act;

(8) Whether, as a result of Defendant's conduct, Plaintiffs have suffered damages; and if so the appropriate amount thereof; and

(9) Whether, as a result of Defendant's misconduct, Plaintiffs are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

These questions of law and fact predominate over questions that affect only individual Class members and there is a well-defined community of interest in the questions of law and fact involved and that affect the Class.

c) Typicality. The Consumer Representatives' claims are typical of the claims of the Class members in that the Consumer Representatives and Class members have Washing Machines with the same Defective Parts and, which share the same defective assembly, workmanship and that are defective as an integrated and assembled finished product. Defendant repeatedly made the same, if not nearly identical, uniform omissions of material information about the Defective Parts, the Machines' performance and the effects caused by the Defective Parts and the use

1 and ownership of the defective Washing Machines. Therefore the claims of the
2 Consumer Representatives are and will be typical of Class members.

3 d) The Class is Ascertainable. The Consumer Representatives have
4 adequately defined the Nationwide Class so the Court will be able to use the
5 definitions to determine class membership.

6 e) Adequacy. The Consumer Representatives will fairly and
7 adequately represent the interests of all Class members. Consumer Representatives
8 have each purchased a Washing Machine and are adequate representatives of the
9 Class as they have no interests which are adverse to the interests of absent Class
10 members. The Consumer Representatives have retained counsel with substantial
11 experience and success in the prosecution of complex defective product and
12 consumer protection class action litigation.

13 f) Superiority. A class action is superior to other available means for
14 the fair and efficient adjudication of this controversy. Class action treatment will
15 permit a large number of similarly situated persons to prosecute their common
16 claims in a single forum simultaneously, efficiently and without duplication of effort
17 and expense that numerous individual actions would necessarily cause. The
18 disposition of their claims in this case and as part of a single class action lawsuit,
19 rather than thousands of individual lawsuits, will benefit the parties and greatly
20 reduce the aggregate judicial resources that would be spent if this matter were
21 handled as hundreds of separate lawsuits. Furthermore, given the extraordinary
22 expenses and burden in conducting the discovery and presentation of evidence about
23 the Defective Parts and the defective condition of the assembled Washing Machines,
24 it is extremely unlikely, and practically impossible for Machine Owners to obtain
25 equitable redress from Defendant, while an important public interest will be served
26 by addressing the matter as a class action. Moreover, separate prosecution by
27 thousands of individual members of the Class would likely establish inconsistent
28 standards of conduct for the Defendant and result in the impairment of and potential

1 harm to, Class members' rights and the disposition of their interests through actions
2 to which they were not parties. The Consumer Representatives are informed and
3 believe that a great amount of time and expense will be saved by conducting the
4 discovery and presentation of evidence about the Defective Parts in the Washing
5 Machines in a single class action lawsuit, in contrast to the repeated discovery and
6 presentation of evidence in hundreds of separate lawsuits brought on the common
7 questions presented by the allegations of this complaint. The Consumer
8 Representatives know of no difficulty that will be encountered in the management of
9 this litigation which would preclude its maintenance as a class action.

10 **FIRST CAUSE OF ACTION**

11 **Asserted On Behalf Of the Nationwide Class, and Alternatively, On Behalf of a**
12 **California Subclass**
13 **(Violations of Cal. Bus. & Prof. Code § 17200 *et seq.*)**

14 98. The Consumer Representatives repeat and re-allege all prior paragraphs
15 and incorporate them as if fully set forth herein.

16 99. Defendant has engaged in unfair, unlawful, and fraudulent business acts
17 or practices as set forth above.

18 100. The Consumer Representatives bring this cause of action on behalf of
19 themselves and the Nationwide Class, or in the alternative, the California Subclass,
20 pursuant to California Business and Professions Code, § 17200, *et seq.*

21 101. Defendant's conduct constitutes unfair business acts and/or practices
22 because Defendant's practices have caused and are likely to cause substantial injury
23 to Plaintiffs which injury is not reasonably avoidable by Plaintiffs as alleged herein.

24 102. Defendant's acts and practices of selling defective Washing Machines
25 offends an established public policy or are immoral, unethical, oppressive,
26 unscrupulous or substantially injurious to consumers as alleged herein

27 103. Furthermore, Bosch acts and practices of selling defective Washing
28 Machines threaten an incipient violation of antitrust laws and/or consumer protection

1 statutes, or violate the policy and spirit of one of those laws because the effect of the
2 acts and practices are comparable to or the same as a violation of the law or
3 otherwise significantly threaten or harm competition as alleged herein.

4 104. Defendant's acts and practices are **unlawful** because they violate
5 California Civil Code § 1668. Defendant's acts and practices are also unlawful
6 because they violate the Song-Beverly Act, Civil Code §§ 1790 et seq., the
7 Consumer Legal Remedies Act, Civil Code §§ 1750 et seq., Cal. Commercial Code
8 § 2313, Bus. & Prof. Code § 17500, and the MMWA.

9 i. Defendant violates Cal. Bus. & Prof. Code § 17500 as alleged
10 throughout this Complaint and in the Second Cause of Action,
11 incorporated hereto by reference.

12 ii. Defendant violated the CLRA as alleged throughout this Complaint
13 and in the Third Cause of Action incorporated hereto by reference.

14 iii. Defendant violates Cal. Civ. Code § 1790 et seq. and Cal. Comm.
15 Code §§ 2313 and the MMWA as alleged throughout this
16 Complaint, and in the Fourth, Fifth, and Sixth Causes of Action,
17 incorporated hereto by reference.

18 105. Defendant's acts and practices are fraudulent in that they have deceived
19 and/or are likely to deceive Plaintiffs and members of the consuming public,
20 including the Class. Defendant sold Plaintiffs Washing Machines with Defective
21 Parts that have rendered the Washing Machines essentially unusable for the purposes
22 for which they were purchased.

23 106. Plaintiffs relied upon Defendant's unfair, unlawful, and fraudulent
24 business acts and practices – the material omissions, and non-disclosures – to their
25 detriment in that they would not have purchased the washers had they known of the
26 true facts.

27 107. Plaintiffs have suffered injury in fact and have lost money as a result of
28 Defendant's unfair competition in that they have overpaid for the Washing

1 Machines, incurred expenses in attempting to repair the Washing Machines or
2 remedy the Biofilm, Foul Odors and the Mold Problem, had their Clothes damaged,
3 have paid Undisclosed Additional Operating Expenses and/or would not have
4 bought the Washing Machines had Defendant not misrepresented and omitted
5 disclosing that the Washing Machines have Defective Parts, are defective products
6 in their integrated and finished and assembled state and are unable to effectively
7 self-clean, that they have a high propensity to develop and/or accumulate Biofilm,
8 Foul Odors, and the Mold Problem, and that owners of the Machines will have to
9 spend money for the Undisclosed Additional Operating Expenses.

10 108. The Consumer Representatives seek an order of this Court awarding
11 restitution, injunctive relief and all other relief allowed under Section 17200, *et seq.*,
12 plus interest, attorneys' fees, and costs.

13 SECOND CAUSE OF ACTION

14 **Asserted On Behalf of the Nationwide Class, and Alternatively, On Behalf of a** 15 **California Subclass** 16 **(Violations of Cal. Bus. & Prof. Code § 17500 *et seq.*)**

17 109. The Consumer Representatives repeat and re-allege all prior paragraphs
18 and incorporate them as if fully set forth herein.

19 110. Defendant is a "person" as defined by Cal. Bus. & Prof. Code § 17506.

20 111. Defendant falsely advertised the performance, uses, benefits,
21 characteristics, quality, grade and standard of the Washing Machines by omission as
22 alleged herein.

23 112. Defendant's omissions, as more fully described above, did deceive, and
24 are likely to deceive Plaintiffs.

25 113. Plaintiffs relied upon these material misrepresentations and omissions to
26 their detriment in that they would not have purchased the Washers had they known
27 of the omitted true facts that Defendant did not disclose to them.

114. The above-described false and misleading advertising conducted by Defendant continues to this day and presents a threat to the general public in that Defendant has not acknowledged its wrongdoing to consumers or publicly issued an appropriate conspicuous notice to existing or prospective purchasers of its Washing Machines, and has not disclosed the presence of the Defective Parts in the Washing Machines that cause the development and accumulation of Biofilm, Foul Odors, the Mold Problem and Machine owners to pay Undisclosed Additional Operating Expenses, all of which resulted in Plaintiffs being deceived and misled.

115. As a result of the above-described conduct, Defendant has been, and will continue to be unjustly enriched at the expense of Plaintiffs.

116. Pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17535, the Consumer Representatives seek an order 1) requiring Defendant to immediately cease the unlawful, unfair, and/ or fraudulent business acts and/or practices and false and misleading advertising complained of herein; 2) enjoining Defendant from continuing to misrepresent the Washing Machines' uses, benefits, characteristics, standard, quality and grade by omitting from its labels, advertising and communications regarding the Washing Machines Defective Parts that the Defective Parts when incorporated and assembled into the integrated finished Washing Machine cause Biofilm, Foul Odors, the Mold Problem to develop and accumulate therein which in turn cause Clothes washed in them to emit offensive and obnoxious odors and their owners to pay Undisclosed Additional Operating Expenses; and 3) requiring Defendant to repair or replace the Washing Machines so that they do not develop or accumulate Biofilm, Foul Odors, the Mold Problem therein which in turn cause Clothes washed in them to emit offensive and obnoxious odors and their owners to pay Undisclosed Additional Operating Expenses; or provide full restitution to Consumer Representatives and Class members of all monies wrongfully acquired by means of such acts of unfair competition and false advertising, plus interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

**Asserted on Behalf of the Nationwide Class, and Alternatively, On Behalf of a
California Subclass
(Violations of the Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*)**

117. Consumer Representatives re-allege and incorporate the above allegations by reference as if fully set forth herein.

118. Consumer Representatives seek to recover for themselves and the Nationwide Class based on Defendant's breach of the Consumer Legal Remedies Act ("CLRA"), California Civil Code § 1750 *et seq.*

119. At all times relevant hereto, Plaintiffs were "consumer[s]" as that term is defined in Civ. Code § 1761(d).

120. At all times relevant hereto, the Machines constituted "goods" as that term is defined in Civ. Code § 1761(a).

121. At all times relevant hereto, Defendant constituted a "person" as that term is defined in Civ. Code § 1761(c).

122. At all times relevant hereto, Plaintiffs' purchases of Defendant's Bosch and Siemens brand 27" Horizontal Axis/Front-Loading Automatic Clothes Washers, including, but not limited to, Bosch Nexxt and Vision Models, and Siemens ultraSense models and replacement parts constituted a "transaction" as that term is defined in Civ. Code § 1761(e).

123. At all times relevant hereto, Defendant provided "services" to Plaintiffs within the meaning of Civ. Code § 1761(b).

124. The CLRA provides, in relevant part, that "[t]he following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful: subsection (a)(5) [r]epresenting that goods . . . have . . . characteristics, uses, benefits . . . which they do not have; ... subsection (a)(7) [r]epresenting that goods ... are of a particular standard, quality or

1 grade . . . if they are of another; ... and subsection (a)(9) [a]dvertising goods ... with
2 intent not to sell them as advertised. Civil Code §§ 1770(a)(5),(7), and (9).

3 125. Defendant makes uniform written representations that the Washing
4 Machines will make Clothes placed in them during a xxtrasanitary or sanitary
5 cleaning cycle, sanitary and clean, which includes removing dirt, bad smells,
6 deleterious organic material, necessarily including mold, mildew and bacteria, the
7 Machines are “High Efficiency” provide “High Care” to the clothes placed in them
8 during a cleaning cycle: that ownership and use of the Machines will require less
9 operation and use and require less energy to make Clothes placed in them during a
10 wash cycle free of dirt, bad smell, deleterious organic material, necessarily
11 including, mold, mildew, bacteria, Biofilm, the Mold Problem and Foul Odors and
12 have other benefits, standards, and qualities as additionally stated above. Said
13 statements are representations regarding the characteristics, uses, benefits, standards,
14 and quality of the Washing Machines that are false, deceptive and/or misleading in
15 violation of the CLRA.

16 126. Defendant misrepresents the characteristics, uses, and benefits of the
17 Washing Machines by failing to disclose material facts which include; a) the
18 Machines have the Defective Parts; b) that the Defective Parts cause Biofilm, the
19 Foul Odors and the Mold Problem; c) Clothes placed in the Machines during a wash
20 cycle will emit offensive and obnoxious odors; d) Machine owners will to undertake
21 Extraordinary Actions (some of which create safety hazards, such as leaving the
22 door ajar in a household with young children); e) the Machines when used as Bosch
23 recommends are not Highly Efficient; f) the Machines do not provide High Care for
24 Clothes placed in them and do not make Clothes placed them clean and free from
25 deleterious organic material and the bad smells and that cause them to pay.

26 127. The information Defendant conceals and/or does not disclose to
27 Plaintiffs are material facts in that a reasonable consumer would have considered
28 them important in deciding whether to purchase, or whether to pay the stated price

1 for, the Washing Machines and because Plaintiffs would have been aware of it and
2 behaved differently by not buying the Washing Machines, not paying for repairs,
3 and/or paying less for the Washing Machines.

4 128. The omission of the Material Facts, as alleged above, is contrary to
5 representations actually made by Defendant, including but not limited to, that the
6 Washing Machines “High Efficiency,” “High Care,” and “Energy-Star”, and “High
7 Care” and/or an omission of fact Defendant was obliged to disclose because:
8 1) Defendant had exclusive knowledge of the Material Facts not known to Plaintiffs
9 and the Class, since only Defendant had exclusive access to the aggregate data from
10 its retailers, its own tests, and complaints from its customers; 2) Defendant actively
11 concealed and suppressed the Material Facts from Plaintiffs by not warning them
12 that the Washing Machines had Defective Parts incorporated into them which cause
13 the development and accumulation of Biofilm, the Foul Odors and the Mold
14 Problem, Clothes placed in the Machines during a wash cycle to emit offensive and
15 obnoxious odors, require their owners to undertake Extraordinary Actions (some of
16 which create safety hazards, such as leaving the door ajar in a household with young
17 children) and that require them to pay Undisclosed Additional Operating Expenses at
18 the time of purchase; 3) by performing warranty and/or repair work that it knew
19 would not repair and did not replace the Defective Parts such that they were no
20 longer defective; 4) by recommending remedies to complaining consumers that it
21 knew would not repair or replace the Defective Parts with non-defective parts or stop
22 the presence of resulting problems thereby causing damages; 5) Defendant made
23 partial representations such as recommending futile remedies like empty hot-water
24 and bleach cycles, and wiping the door gasket dry after every wash, but also
25 suppressed the Material Facts; and 6) the Material Facts relate to safety in that the
26 Machines develop mold and deleterious organic matter which poses a risk of harm to
27 Machine owners’ health and Bosch’s recommendation, only post sale, to consumers

1 that the Washer door must be left “ajar” creates an admitted risk of injury and death
2 to children present in households with Washing Machines.

3 129. Plaintiffs justifiably acted or relied to their detriment upon the
4 undisclosed facts as evidenced by their purchase of the defective Washing Machines.
5 Had Plaintiffs known of the Material Facts, they would not have purchased the
6 Washing Machines, or would have paid less for them.

7 130. Civil Code § 1780 (a)(2) permits any court of competent jurisdiction to
8 enjoin practices that violate Civil Code § 1770. Plaintiffs are entitled to recover
9 damages as provided by statute, as well as costs, attorney’s fees, rescission, and
10 other relief as is deemed appropriate.

11 131. Pursuant to Civil Code § 1782, Consumer Representatives have notified
12 Defendant in writing of its particular violations of Civil Code § 1770 and made a
13 demand for corrective action. Consumer Representatives sent this notice by certified
14 mail, return receipt requested, to Defendant’s principal place of business. [See
15 attached Ex. “5”].

16 **FOURTH CAUSE OF ACTION**

17 **Asserted On Behalf of the California and New York Subclasses** 18 **(Violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* –** 19 **Breach of Implied Warranty of Merchantability)**

20 132. Consumer Representatives repeat and re-allege all prior paragraphs and
21 incorporate them as if fully set forth herein.

22 133. The Washing Machines are “consumer products” as that term is defined
23 under 15 U.S.C. § 2301(1).

24 134. Plaintiffs and Class members are “consumers” as that term is defined by
25 15 U.S.C. § 2301(3), and utilized the Machines for personal and household use and
26 not for resale or commercial purposes.

27 135. Defendant is a “warrantor” and “supplier” as those terms are defined by
28 15 U.S.C. § 2301(4) and (5).

136. Defendant provided Plaintiffs with “implied warranties” as that term is defined by 15 U.S.C. § 2301(7).

137. In its capacity as a warrantor, and by the conduct described herein, any attempt by Defendant to limit the implied warranty of merchantability in a manner that would exclude coverage for the Defective Parts in the Washing Machines or the defective condition of the Washing Machines in their integrated assembled state is unconscionable and any such effort to disclaim, or otherwise limit, liability for its defective Washing Machines is null and void as alleged above.

138. This Court has jurisdiction over this cause of action under 28 U.S.C. 1332.

139. Defendant has failed to conform the Washing Machines to the implied warranty of merchantability.

140. Plaintiffs fulfilled their obligations under the warranties.

141. As a result of Defendant’s breach of implied warranties, Plaintiffs are entitled to revoke their acceptance of the Washing Machines, obtain damages and equitable relief, and obtain attorneys’ fees and costs pursuant to 15 U.S.C. § 2310.

FIFTH CAUSE OF ACTION
Asserted On Behalf of the California and New York Subclasses
(Breach of Implied Warranty under NY UCC § 2-314 and Cal. Song-Beverly
Act)

142. Consumer Representatives Wentworth and Isabella re-allege and incorporate the above allegations by reference as if fully set forth herein.

143. Consumer Representatives Wentworth and Isabella, respectively, seek to recover for the Subclasses based on Defendant’s breach of implied warranty under California’s Song-Beverly Consumer Warranty Act and New York UCC §2-314)

144. Under California’s Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1792 et seq., every sale of consumer goods is accompanied by both a

1 “manufacturer’s and retailer’s” implied warranty that the goods are merchantable
2 within the meaning of Cal. Civ. Code § 1791.1(a). Therefore, California consumers
3 need not be in privity with the manufacturer to bring an implied warranty claim.

4 145. New York recognizes the “thing of danger” exception to the privity
5 requirement. The presence of mold and mildew in the Machines poses a threat to
6 Plaintiffs’ safety and to the safety of others. Additionally, Bosch has admitted that
7 the Washing Machines pose an entrapment risk of injury and death to children when
8 the door is left “ajar” per its own recommendations. In addition, Plaintiffs allege
9 herein that the Mold Problem creates a safety issue with respect to user’s and
10 household members’ health.

11 146. The Washing Machines are “consumer goods” within the meaning of
12 Cal. Civ. Code § 1791(a).

13 147. Defendant is a “manufacturer” within the meaning of Cal. Civ. Code §§
14 1791(j).

15 148. Plaintiff Wentworth bought her Washing Machine at retail in the State of
16 California.

17 149. At the time of sale, and currently, Defendant is in the business of
18 manufacturing and selling Washing Machines.

19 150. By operation of law, Defendant impliedly warranted to Plaintiffs that its
20 Washing Machines were of merchantable quality and fit for the ordinary purposes
21 for which they are used.

22 151. Defendant possessed actual superior knowledge that the Washing
23 Machines’ Defective Parts caused the development and accumulation of Biofilm, the
24 Foul Odors, the Mold Problem; caused Clothes washed in them to emit offensive
25 and noxious odors and Machine owners to pay Undisclosed Additional Operating
26 Expenses and based on pre-market testing, complaints posted on the internet, and
27 complaints made to Defendant’s call center.

1 152. Defendant's waiver and/or limits on implied warranties are
2 unconscionable, unenforceable, and/or illegal. Plaintiffs had no meaningful choice in
3 determining those time limitations; the warranties were written by Defendant,
4 without input of Plaintiffs; the Warranty overwhelmingly favors Defendant by
5 unreasonably limiting the warranty to 2 years on a product that could reasonably be
6 expected to last 10 or more years; a gross disparity in bargaining power existed as
7 between Defendant and Class members; Defendant knew or should have known that
8 its Washing Machines were defective at the time of sale and would accumulate
9 Biofilm and develop the Foul Odors and the Mold Problem before the end of their
10 useful lives, and Plaintiffs were unfairly surprised by the time limitation upon
11 discovering that Bosch knew Washing Machines has the Mold Problem.

12 153. Defendant breached the implied warranty at the time of sale by selling
13 defective Washing Machines. In the alternative, as to the California Class only,
14 Plaintiffs' Washing Machine became unfit for their ordinary purpose of cleaning
15 Clothes within the implied warranty period because they accumulated Biofilm,
16 produced Foul Odors, developed the Mold Problem, and caused Clothes placed in
17 them during a wash cycle to emit offensive and noxious odors.

18 154. Plaintiffs' Washing Machines do not pass without objection in the trade
19 as they are sold as a premium product, but fail to clean Clothes.

20 155. Plaintiffs' Washing Machines became unfit for their ordinary purpose of
21 cleaning Clothes.

22 156. Plaintiffs' Washing Machines were not adequately contained, packaged,
23 or labeled as the labels "High Efficiency" and "High Care" "and Xxtra Sanitary" are
24 inaccurate and misleading as alleged herein.

25 157. Plaintiff's and Class member's Washing Machines do not conform to the
26 promises or affirmations of fact made on the labels including "High Efficiency"
27 "High Care" and "Xxtra Sanitary" as Clothes washed inside the Machines are
28 impregnated with mold and mildew.

1 158. Plaintiffs were the intended third-party beneficiaries of the implied
2 warranty made by Defendant. Defendant knew that the retailers to whom it sold the
3 Washing Machines were not going to own the Washing Machines any longer than it
4 took to sell them to Plaintiffs. Bosch entered into a contract for the sale of all of its
5 Machines to retailers. In particular, Bosch entered into contracts with all resellers of
6 the Washing Machines, contract which included warranties, express and implied.
7 Bosch and all resellers to which it sold the Washing Machines knew and understood
8 that the resellers' purpose in purchasing Washing Machines was to sell them to
9 consumers, and not operate or use them itself, and both Bosch and the resellers
10 intended all consumers that purchased their Washing Machines from a reseller to be
11 the beneficiaries of the implied and express warranties that existed because of
12 Bosch's sale of Washing Machines to resellers. In the case of Consumer
13 Representative Wentworth, Ms. Wentworth is the third party beneficiary of a
14 contract for the sale of a Washing Machine from Bosch to Pacific Sales, Inc. In the
15 case of Consumer Representative Isabella, Ms. Isabella is the third party beneficiary
16 of the contract for sale of a Washing Machine from Bosch to Showcase Furniture.
17 In the case of Consumer Representative Gibson, Ms. Gibson is the third party
18 beneficiary of a contract for the sale of a Washing Machine from Bosch to US-
19 Appliance.com. In the case of Consumer Representative Demereckis, Mr.
20 Demereckis is the third party beneficiary of the contract for sale of a Washing
21 Machine from Bosch to ABT Electronics & Appliances. Indeed, all Class members,
22 either purchased their Machines directly from Bosch or were the intended third party
23 beneficiaries of the contracts for sale of the Washing Machines from Bosch to
24 retailers.

25 159. Further, Defendant intended that any warranties, whether express or
26 implied, that applied to the Washing Machines were for the benefit of Plaintiffs.
27
28

1 160. Defendant knew Plaintiffs were, and intended that Plaintiffs be, the
2 ultimate beneficiaries of Defendant's implied warranties as they are the owners of
3 the Washing Machines.

4 161. Defendant, who manufactures and markets the Washing Machines,
5 and/or sellers/resellers of the Washing Machines, knew that Plaintiffs were the end
6 users of the Washing Machines when Defendant entered into any and all sales
7 contracts and subcontracts for the Washing Machines and Defendant's intent to
8 benefit Plaintiffs arises by operation of law pursuant to the "implied covenant of
9 good faith and fair dealing" contained within any and all sales contracts and
10 subcontracts for the Washing Machines entered into by Defendant.

11 162. Defendant brought itself into privity with Plaintiffs and class members
12 by making representations to them through labels such as "High Efficiency" and
13 "High Care" upon which they relied.

14 163. Defendant, in addition to and separate and apart from the foregoing
15 created privity with the first using purchasers of the Washing Machines a unilateral
16 contract of express warranty. By said action Bosch created contractual privity
17 between itself and every first purchasing user.

18 164. As a proximate result of Defendant's breach of implied warranty,
19 Plaintiffs have sustained damages and other losses in an amount to be determined at
20 trial. Plaintiffs are entitled to recover damages and attorneys' fees, costs, rescission,
21 and other relief as is as provided by statute or deemed appropriate by the Court.

22 SIXTH CAUSE OF ACTION

23 24 **Asserted On Behalf Of The Illinois Subclass** 25 **(Violation of the Illinois Consumer Fraud and Deceptive Practices Act,** 26 **815 ILCS 505/1 et seq.)**

27 165. Consumer Representative Demereckis repeats and re-alleges all prior
28 paragraphs and incorporates them as if fully set forth herein.

1 166. The Illinois Consumer Fraud and Deceptive Trade Practices Act
2 (“ICFA”) prohibits “unfair and deceptive practices.”

3 167. Consumer Representative Demereckis and members of the Illinois
4 Subclass are consumers.

5 168. Consumer Representative Demereckis and members of the Illinois
6 Subclass reasonably expected that their Washing Machines would not have the
7 Defective Parts that caused their Washing Machines to develop and accumulate
8 Biofilm and develop Foul Odors, the Mold Problem, damaged Clothes placed in the
9 Washing Machines during a wash cycle and pay Undisclosed Additional Operating
10 Expenses.

11 169. Defendant developed, manufactured, marketed and sold the Washing
12 Machines. The Washing Machines are defective because they have Defective Parts
13 that, which following normal operation and usage of the Washing Machines cause
14 them to develop and accumulate Biofilm, develop Foul Odors and the Mold
15 Problem, make Clothes inside of them during a wash cycle to emit offensive and
16 noxious odors and Machine owners to incur Undisclosed Additional Operating
17 Expenses.

18 170. Defendant’s misconduct, including the omissions of Material Facts, as
19 described above, took place in the course of trade or commerce in Illinois, and arose
20 out of transactions that occurred at retail outlets in Illinois.

21 171. Defendant had knowledge of the Defect Parts at all relevant times as
22 alleged above.

23 172. Despite Defendant’s knowledge of the Defective Parts in the Washing
24 Machines, and the Material Facts, Defendant has failed to disclose the existence of
25 this material information to Consumer Representative Demereckis and members of
26 the Illinois Subclass at the time each of them purchased the Washing Machines,
27 and/or at the time they made a Warranty claim related to the Defective Parts,

1 Biofilm, the Foul Odors, the Mold Problem or Clothes that smelled offensive or
2 noxious following their presence in a Washing Machine during a wash cycle.

3 173. Defendant intended, and continues to intend, that Consumer
4 Representative Demereckis and members of the Illinois Subclass rely on the
5 omissions of Material Facts.

6 174. In failing to inform consumers of the Defective Parts, Defendant has
7 engaged in an unfair or deceptive act prohibited by the ICFA.

8 175. If not for Defendant's deceptive and unfair acts of concealing from
9 Plaintiffs the Material Facts as alleged herein, Plaintiffs would not have purchased
10 the Washing Machines, or would have paid less for them. Defendant, at all relevant
11 times knew or should have known that Plaintiffs did not know or could not have
12 reasonably discovered the Defective Parts prior to their purchases.

13 176. Consumer Representative Demereckis and members of the Illinois Class
14 relied on Defendant's omission of the Material Facts at the point of purchase on the
15 Washing Machines' labels in retail stores where the Washing Machines are sold as
16 alleged herein, and would not have purchased the Washing Machines had Defendant
17 disclosed the Material Facts.

18 177. As a direct and proximate result of Defendant's violations of the ICFA,
19 Plaintiffs suffered damages, in the form of, among other things, monies spent in
20 attempting to repair the Washing Machines or remedy the Foul Odors and Mold
21 Problems, and/or diminution in value of the Washing Machines.

22 178. The statute of limitations was tolled by Defendant's fraudulent
23 concealment of the Defective Parts, the discovery rule, and/or the continuing
24 violations rule.

25 179. Defendant's violation of the ICFA entitles Consumer Representative
26 Demereckis and members of the Illinois Subclass to statutory and actual damages,
27 punitive damages, injunctive relief, and attorney's fees and costs.

SEVENTH CAUSE OF ACTION

**Asserted On Behalf Of The Maryland Subclass
(Violation of the Maryland Consumer Protection Act,
Md. Code Ann., Com. Law § 13-101)**

180. Consumer Representative Beverly Gibson repeats and re-alleges all prior paragraphs and incorporates them as if fully set forth herein.

181. Consumer Representative Beverly Gibson and members of the Maryland Subclass are “consumers” and “persons” within the meaning of Md. Code Ann., Com. Law § 13-101(c) and (h); Defendant is a “merchant” within the meaning of Md. Code Ann., Com. Law § 13-101(f).

182. The Washing Machines are “consumer goods” and “merchandise” within the meaning of Md. Code Ann., Com. Law § 13-101(d) and (f).

183. The Maryland Consumer Protection Act proscribes any “[f]alse, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers” in connection with the sale of consumer goods. Md. Code Ann., Com. Law § 13-301(1);

184. The Maryland Consumer Protection Act also proscribes “any representation that... [c]onsumer goods, consumer realty, or consumer services have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity which they do not have”; and “[c]onsumer goods, consumer realty, or consumer services are of a particular standard, quality, grade, style, or model which they are not.” Md. Code Ann., Com. Law § 13-301(2)(i) and (2)(iv).

185. The Maryland Consumer Protection Act also proscribes as unfair and deceptive trade practices: “[f]ailure to state a material fact if the failure deceives or tends to deceive; [a]dvertisement or offer of consumer goods... [w]ithout intent to sell... them as advertised or offered; [k]nowingly false statement that a service, replacement, or repair is needed; [d]eception, fraud, false pretense, false premise,

1 misrepresentation, or knowing concealment, suppression, or omission of any
2 material fact with the intent that a consumer rely on the same in connection with ...
3 [t]he promotion or sale of any consumer goods, consumer realty, or consumer
4 service... or [t]he subsequent performance of a merchant with respect to an
5 agreement of sale. Md. Code Ann., Com. Law § 13-301(3), (5)(1), (7), (9)(i) and
6 (9)(iii).

7 186. Defendant falsely represented material facts regarding the Machines
8 which misled Ms. Gibson and members of the Maryland Subclass as more fully
9 alleged herein.

10 187. Defendant misrepresented the characteristics, uses, benefits, standard,
11 quality, and grade of the Machines as alleged herein.

12 188. Defendant failed to disclose on labels attached to the Washing Machines
13 that Ms. Gibson observed at the point of sale Material Facts regarding the Washing
14 Machines and that owners would be required to take Extraordinary Actions and to
15 pay Undisclosed Additional Operating Expenses.

16 189. Defendant advertised the Machines without the intent to sell them as
17 advertised as alleged herein.

18 190. Defendant deceived Ms. Gibson and members of the Maryland Subclass
19 by misrepresenting and/or omitting material facts in connection with the sale of the
20 Washing Machines as alleged herein in violation of Md. Code Ann., Com. Law §
21 13-301(9)(i). Defendant also violated Md. Code Ann., Com. Law § 13-301(9)(iii)
22 by falsely representing by omission to Ms. Gibson and Maryland Subclass members
23 that the Washing Machines were not defective, recommending futile Extraordinary
24 Actions, and advising replacement and repairs, such as new door gaskets, that Bosch
25 knew would not repair the Defective Parts or replace the Defective Parts with non-
26 defective parts, which would result in the Washing Machines not developing or
27 accumulating Biofilm, the Mold Problem, Foul Odors and not making Clothes
28 present in them during a wash cycle have noxious and offensive odors. Defendant

1 knew of the falsity of its omissions and intended to induce reliance by Ms. Gibson
2 and members of the Maryland Subclass as alleged herein.

3 191. Consumer Representative Gibson and Maryland Class members relied
4 on Defendant's Omissions of Material Fact on the labels attached to the Washing
5 Machines at the point of purchase in retail stores where they purchased the Washing
6 Machines in that they would not have purchased the Washing Machines had Bosch
7 disclosed to them Material Facts through labels on the Machines.

8 192. As a result of Defendant's conduct, Consumer Representative Gibson
9 and members of the Maryland Subclass did not receive the benefit of the bargain
10 because they overpaid for the Machines.

11 193. As a result of Defendant's conduct, Consumer Representative Gibson
12 and members of the Maryland Subclass lost money through the diminution in value
13 of their Machines, as well as money spent on Undisclosed Additional Operating
14 Expenses and replacement parts

15 194. Consumer Representative Gibson and members of the Maryland
16 Subclass seek restitutionary and injunctive relief, as well as damages, costs and
17 attorneys fees.

18 EIGHTH CAUSE OF ACTION

19 Asserted on Behalf of the New York Subclass 20 (Violations of § 349 of New York General Business Law: Deceptive Acts 21 and Practices)

22 195. Consumer Representative Trish Isabella repeats and realleges all prior
23 paragraphs and incorporates them as if fully set forth herein.

24 196. NY GBL § 349 makes unlawful any deceptive act or practice, including
25 false advertising, in the conduct of any trade or commerce or in the furnishing of any
26 service in New York.

27 197. Ms. Isabella purchased her Washing Machine in New York and brings
28 this action pursuant to NY GBL § 349 on behalf of herself and all members of the

1 New York Subclass. Ms. Isabella and members of the New York Subclass are
2 consumers.

3 198. Defendant has engaged in deceptive practices through omissions of the
4 presence of Defective Parts in the assembled Washing Machines Defendant sold and
5 the Material Facts directed at Ms. Isabella and members of the New York Subclass,
6 as more fully described above, in connection with the sale of Washing Machines that
7 have Defective Parts that cause the Washing Machines to develop and accumulate
8 Biofilm, the Mold Problem and emit Foul Odors, cause Clothes present in them
9 during a wash cycle to emit offensive and noxious odors and cause their owners to
10 pay Undisclosed Additional Operating Expenses. Defendant's omissions are likely
11 to mislead and did materially mislead Ms. Isabella and other reasonable consumers
12 by causing them to purchase the Washing Machines and to pay for Undisclosed
13 Additional Operating Expenses that they would not have paid for (or would have
14 paid less for their Washing Machine), but for Defendant's omissions.

15 199. Defendant made numerous omissions of the Material Facts and presence
16 of the Defective Parts in its printed labels placed on the Washing Machines and
17 which Ms. Isabella and members of the New York Subclass saw and relied on to
18 their detriment. Consumer Representative Isabella and New York Class members
19 relied on Defendant's Omissions of the presence of the Defective Parts in the
20 Washing Machines and Material Facts on the labels attached to the Washing
21 Machines at the point of purchase in retail stores where they purchased the Washing
22 Machines in that they would not have purchased the Washing Machines had Bosch
23 disclosed to them that the Machines had present in them Defective Parts and the
24 Material Facts stating those facts on the labels present on the Machines at New York
25 resellers premises.

26 200. The unfair and deceptive trade practices have directly, foreseeably, and
27 proximately caused damages and injury to Ms. Isabella and members of the New
28 York Subclass. Consumer Representative Isabella and New York Subclass members

1 have lost money in that they would not have purchased the Washing Machines or
2 would have paid less for them. Consumer Representative Isabella seeks to enjoin
3 Defendant's deceptive conduct, as well as damages and attorneys' fees, and all other
4 relief available under NY GBL § 349.

5
6 **NINTH CAUSE OF ACTION**

7 **Asserted on Behalf of the New York Subclass**
8 **(Violations of § 350 of New York General Business Law: False Advertising**
9 **Unlawful)**

10 201. Consumer Representative Trish Isabella repeats and realleges all prior
11 paragraphs and incorporates them as if fully set forth herein.

12 202. NY GBL § 350 makes false advertising unlawful.

13 203. Defendant's advertising of the Washing Machines, as alleged in more
14 detail herein, is and was false within the meaning of NY GBL § 350-a(1).

15 204. Consumer Representative Isabella and New York Subclass members
16 were materially misled by Defendant's advertising.

17 205. Consumer Representative Isabella and New York Class members relied
18 on Defendant's Omissions of Material Facts on the labels attached to the Washing
19 Machines at the point of purchase in retail stores where they purchased the Washing
20 Machines in that they would not have purchased the Washing Machines had Bosch
21 disclosed to them Material Facts through labels on the Machines.

22 206. As a direct and proximate result of Defendant's false advertising, Ms.
23 Isabella and New York Subclass members lost money in that they would not have
24 purchased the Washing Machines or would have paid less for them.

25 207. Consumer Representative Isabella seeks to enjoin Defendant's deceptive
26 conduct, as well as damages and attorneys' fees, and all other relief available under
27 NY GBL § 350.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendant for the following:

1. An order certifying a Nationwide Class, as well as California, Illinois, Maryland, and New York Subclasses, and appointing Beverly Gibson, Trish Isabella, Nancy Wentworth and Dennis Demereckis as representative plaintiffs and their undersigned counsel to be class counsel for the Nationwide Class;

2. A constructive trust on, and restitution, of all amounts obtained by Defendant as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations;

3. All recoverable compensatory and other damages sustained by Plaintiffs;

4. Actual and/or statutory damages for injuries suffered by Plaintiffs in the maximum amount permitted by applicable law;

5. An order (1) enjoining Defendant's wrongful, unfair, unlawful, fraudulent, and deceptive conduct as set forth above; (2) ordering Defendant to engage in a corrective notice campaign; and (3) requiring Defendant to refund to Plaintiffs the funds paid to Defendant for the defective Washing Machines;

6. Statutory pre-judgment and post-judgment interest on any amounts;

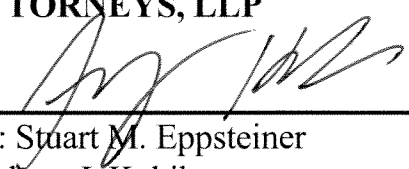
7. Payment of reasonable attorneys' fees and costs as may be allowable under applicable law; and

1 8. Such other relief as the Court may deem just and proper.

2 The Consumer Representatives, individually and on behalf of all similarly
3 situated persons, hereby demand a trial by jury on all issues so triable.

4 DATED: December 12, 2014

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Counsel for Plaintiffs and the Class

EXHIBIT 1

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Counsel for Plaintiffs and the Class

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

DIANA TAIT and NANCY WENTWORTH,
individually and on behalf of all others similarly
situated,

PLAINTIFFS,

vs.

BSH HOME APPLIANCES CORPORATION,
a Delaware Corporation,

DEFENDANT.

CASE NO.:

**DECLARATION OF NANCY
WENTWORTH**

[Jury Trial Demanded]

I, Nancy Wentworth, declare as follows:

1. I am a named plaintiff in this litigation.
2. I have personal knowledge of the matters set forth below except to those matters stated herein which are based on information and belief, which matters I believe to be true.
3. If called as a witness I could and would competently testify to the matters included herein.
4. I am informed and believe that venue is proper in this Court under Civil Code § 1780(d) based on the fact that BSH Home Appliances Corporation resides in, does substantial business in, and has its principal place of business in Orange County, which is located in this District.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this declaration was executed on April 29, 2010 in San Diego, California.

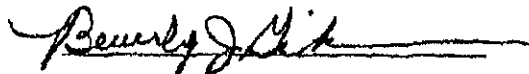
By: Nancy Wentworth
Nancy Wentworth

AFFIDAVIT OF BEVERLY GIBSON

I, BEVERLY GIBSON, submit this affidavit pursuant to §1780(d) of the CAL. CIV. CODE, Consumers Legal Remedies Act, and declare the following:

1. I am named plaintiff in this litigation.
2. If called as a witness I could and would competently testify to the matters included herein.
3. I am informed and believe that the Defendant in this action resides in, conducts substantial business activity in, and has its principal place of business in Orange County, which is located in this District, and therefore this District is a proper place for trial of this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14 day of October 2010, in ABERDEEN Maryland.



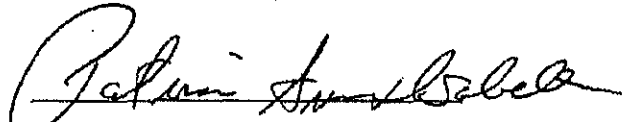
BEVERLY GIBSON

AFFIDAVIT OF PATRICIA ANN ISABELLA

I, PATRICIA ANN ISABELLA, submit this affidavit pursuant to §1780(d) of the CAL. CIV. CODE, Consumers Legal Remedies Act, and declare the following:

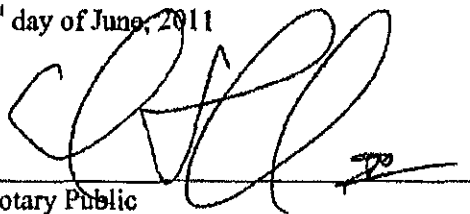
1. I am named plaintiff in this litigation.
2. If called as a witness I could and would competently testify to the matters included herein.
3. I am informed and believe that Defendant in this action resides in, conducts substantial business activity in, and has principal place of business in Orange County, which is located in this District, and therefore this District is a proper place for trial of this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 1st day of June, 2011, in Johnstown, New York.


PATRICIA ANN ISABELLA

Sworn to Before this

1st day of June, 2011


Notary Public

ELMER ROBERT KEACH, III
Notary Public - State of New York
No. 02KE6197061
Qualified in Montgomery County
Commission Expires 11/24/2012

EXHIBIT 2

WPMC8440UC Bosch Nexxt 800 Series Front Load Washer with Aquas... <http://web.archive.org/web/20090201022409/http://www.us-appliance.com/>

Wayback Machine <http://www.us-appliance.com/wfmc8440uc.html> Go DEC MAR Close
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[Home](#) > [Laundry](#) > [Bosch Laundry](#) > [Bosch Washers](#) > WFCM8440UC Bosch Nexxt 800 Series Front Load Washer with Aquastop - Silver and White

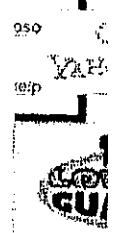
WFCM8440UC Bosch Nexxt 800 Series Front Load Washer with Aquastop - Silver and White

Code: WFCM8440UC

Regular price: **\$1,549.00**

Safe price: \$1,399.00

You Save: **\$150.00**



Get a free Bosch dishwasher when you purchase a Bosch Appliance Package
[Details with Range](#) [Details with Oven](#) (Expires Dec 31, 2008.)

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Performance

- XXTRASANITARY™ Cycle
- KIDSCARE™ Cycle
- Jeans Cycle
- AQUAGUARD™ Cycle
- Comforter Cycle
- [Performance Details and Photos](#)

Efficiency

- ECOACTION™
- ENERGY STAR® Qualified
- 1,200 rpm Spin Speed
- [Efficiency Details and Photos](#)

Quietness

- 54dB - Silence Rating
- Quietest Washer in U.S.
- Nearly Silent Wash System
- [Quietness Details and Photos](#)

Capacity

- 4.2 Cubic Foot Large Capacity Washer

Washer Safety

- AQUASTOP® Leak Protection
- [Safety Details and Photos](#)

Gentle Care

WFM8440UC Bosch Nexxt 800 Series Front Load Washer with Aquas... <http://web.archive.org/web/20081205124221/http://www.us-appliance.c>

- SENSOTRONIC® PLUS
- ARCHIE® Paddles
- Internal Water Heater
- Gentle Care Detergent Dispenser

Approximate Overall Dimensions:

Height 36 15/16"
Width 27"
Depth 31 9/16"

Before install, consult installation instructions packed with product/kit for current dimensions.

SHARE

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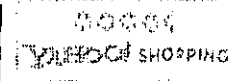
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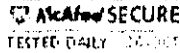
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WFCM8440UC Bosch Nexxt 800 Series Front Load Washer with Aquastop - Silver and White

Code: WFCM8440UC

Regular price: \$1,399.00

Sale price: \$1,329.00

You Save: \$70.00



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- XXTRASANITARY™ Cycle
- KIDSCARE™ Cycle
- Jeans Cycle
- AQUAGUARD™ Cycle
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- ECOACTION™
- ENERGY STAR® Qualified
- 1,200 rpm Spin Speed
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Quietness

- 54dB - Silence Rating
- Quietest Washer in U.S.
- Nearly Silent Wash System
- [Quietness Details and Photos](#)

Capacity

- 4.2 Cubic Foot Large Capacity Washer

Washer Safety

- AQUASTOP® Leak Protection
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Gentle Care

WPMC8440UC Bosch Nexxt 800 Series Front Load Washer with Aquas... <http://web.archive.org/web/20090201022409/http://www.us-appliance.c>

- SENSOTRONIC® PLUS
- ARCHIE® Paddles
- Internal Water Heater
- Gentle Care Detergent System

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Approximate Overall Dimensions:

Height 36 15/16"
Width 27"
Depth 31 9/16"

Before install, consult installation instructions packed with product/kit for current dimensions.

SHAPE

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EXHIBIT 3

WFCM8440UC

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WFCM8440UC

Nexxt 800 Series

Washer

Silver and White Duo-Tone

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Product features

Performance -

- 4.2 cu.ft Drum Capacity
- 15 programs
- Spin Speed: 1200 rpm
- Internal Water Heater Heats Water Quickly and Efficiently
- Durable, Scratch Resistant, Melalit Worktop
- Backed by Good Housekeeping Seal - Two Year Limited Warranty
- XXTRASANITARY® - NSF Certified Eliminates 99.99% of Bacteria
- Stain Removal Option Removes 14 Everyday Stains
- Comforter Cycle to Deeply Clean Bulky Items Like Comforters
- Quick Wash Cycle Completes Full Loads in as Little as 45 Min.
- Jeans Cycle Prevents Fading and Extends Fabric Life

WFC8440UC

<http://www.bosch-home.com/us/WFC8440UC.html?source=search>

- KIDSCARE™ Cycle Removes a Variety of Tough Stains

Efficiency -

- Exceeds ENERGY STAR® 2011 Guidelines - Uses only 151 kWh/yr
- ECOACTION™ Option Reduces Energy Usage by up to 20%
- Washer Sensors Reduce Water Usage by up to 76%
- Bosch Washers Exceed Federal Energy Standards by up to 102%

Quietness -

- Virtually Silent: 53 dBA

Safety -

- AquaStop® Leak Protection Protects From Costly Water Damage

Gentle Care -

- NSF Certified - Eliminates 99.9% of Bacteria
- SENSOTRONIC PLUS Sensors Analyze Load and Optimizes the Cycle
- High Quality, Snag Free Stainless Steel Drum
- Additional Rinse Option Removes Any Traces of Detergent

8.

EXHIBIT 4

Prestige EnviroMicrobiology, Inc

Client: Iowa Environmental Services, Inc.

Client Project: Eppsteiner – Bosch Front Load Newton, IA

Sample date: 11-4-2010

Submittal date: 11-4-2010

Samples submitted by: Nancy Ivers

Data analysis completed: November 8, 2010

Prestige number: 101105-03

Microscopic Method: Analysis of Tape-Lift Samples for Fungi by Optical Microscopy

Client sample ID Location	Sample dimension	Fungal ID	Fungal structures observed	Fungal density	Notes
119284 Inner door gasket right of 6:00, before cycle	3/4" x 3/4"	<i>Aspergillus</i>	spores, conidiophores, hyphae	5	Fungal growth
119285 Inner door gasket 8:00, before cycle	2 1/2" x 3/4"	<i>Cladosporium</i>	spores, conidiophores, hyphae	1	Fungal growth

1. The samples in this report were received in good, acceptable conditions.
2. Fungal density rating 1-5 (1 being the lowest and 5 the highest) indicates density of fungal growth structures observed. No fungal density is provided for loose spores, hyphal fragments and other structures.

Report approved: _____

Theresa Lehman
Theresa Lehman, MPH, Lab Director

Quality control check: _____

Chin S Yang
Chin S Yang, Ph.D.

Report review: _____

Theresa Lehman

Prestige EnviroMicrobiology, Inc

AJHA Environmental Microbiology PAT Program participant

Laboratory ID Number 192810

Website: www.prestige-em.com

Client: Iowa Environmental Services, Inc.

Client Project: Eppsteiner – Bosch Front Load Newton, IA

Sample date: 11-4-2010

Submittal date: 11-4-2010

Inoculation dates: 11-5-2010 (Swabs & Bulks)

Samples submitted by: Nancy Ivers

Data analysis completed: November 12, 2010

Prestige number: 101105-03

Culture Method: Culture Analysis of Swab Samples for Fungi Speciation

Client sample ID Location	Area (in ²)	Medium used	Dilution factor	Fungal Identification	Colony counts	Conc. (CFU/ in ²)	Percentage
119282 Inner door gasket right of 6:00, before cycle	1/2	MEA	10,000x	<i>Aspergillus niger</i> <i>Aspergillus flavipes</i>	114 26	2,300,000 520,000 Total 2,800,000	81% 19%
119287 sump in outer tub	1/2	MEA	1,000x	<i>Aspergillus versicolor</i> <i>Penicillium citreonigrum</i> <i>Penicillium citrinum</i> <i>Penicillium restrictum</i>	17 4 1 1	34,000 8,000 2,000 2,000 Total 46,000	74% 17% 4% 4%
119290 drain boot	1/2	MEA	1,000x	<i>Aspergillus versicolor</i> <i>Paecilomyces marquandii</i> <i>Penicillium chrysogenum</i> <i>Penicillium decumbens</i>	22 1 1 7	44,000 2,000 2,000 14,000 Total 62,000	71% 3% 3% 23%
119292 button trap front upper	1/2	MEA	1,000x	<i>Aspergillus fumigatus</i> <i>Aspergillus sydowii</i> <i>Aspergillus versicolor</i> <i>Paecilomyces marquandii</i> <i>Penicillium chrysogenum</i> <i>Penicillium citrinum</i> <i>Penicillium corylophilum</i> <i>Penicillium decumbens</i> <i>Penicillium restrictum</i> <i>Penicillium viridicatum</i>	1 9 14 16 1 1 1 4 1 2	2,000 18,000 28,000 32,000 2,000 2,000 2,000 8,000 2,000 4,000 Total 100,000	2% 18% 28% 32% 2% 2% 2% 8% 2% 4%
119294 button trap back lower	<1/2	MEA	100x	<i>Aspergillus versicolor</i> <i>Penicillium implicatum</i> <i>Penicillium viridicatum</i>	16 1 1	>3,200 >200 >200 Total >3,600	89% 6% 6%

Prestige EnviroMicrobiology, Inc

ALHA Environmental Microbiology PAT Program participant

Laboratory ID Number 192810

Website: www.prestige-em.com

119299 top of spinner support	1/2	MEA	1,000x	<i>Aspergillus sydowii</i>	1	2,000	1%
				<i>Aspergillus versicolor</i>	92	180,000	67%
				<i>Penicillium decumbens</i>	5	10,000	4%
				<i>Penicillium implicatum</i>	1	2,000	1%
				<i>Penicillium restrictum</i>	37	74,000	27%
				<i>Penicillium variable</i>	1	2,000	1%
				Total		270,000	
119301 gasket – tub flange 6:00	1/2	MEA	10,000x	<i>Aspergillus flavipes</i>	8	160,000	36%
				<i>Aspergillus fumigatus</i>	7	140,000	32%
				<i>Aspergillus versicolor</i>	5	100,000	23%
				<i>Penicillium viridicatum</i>	2	40,000	9%
				Total		440,000	

Culture Method: Culture Analysis of Bulk Samples for Fungi Speciation

Client sample ID Location	Wt. (g)	Medium used	Dilution factor	Fungal Identification	Colony counts	Conc. (CFU/ g)	Percentage
119286 Back (rear half) of outer tub	0.1152	MEA	10,000x	<i>Aspergillus fumigatus</i>	2	170,000	1%
				<i>Aspergillus sydowii</i>	82	7,100,000	32%
				<i>Aspergillus versicolor</i>	41	3,600,000	16%
				<i>Penicillium decumbens</i>	42	3,600,000	16%
				<i>Penicillium fellutanum</i>	8	690,000	3%
				<i>Penicillium restrictum</i>	78	6,800,000	31%
				<i>Penicillium variable</i>	1	87,000	<1%
				Total		22,000,000	
119289 outer tub seal	0.0456	MEA	1,000x	<i>Aspergillus flavipes</i>	1	22,000	<1%
				<i>Aspergillus fumigatus</i>	1	22,000	<1%
				<i>Aspergillus sydowii</i>	3	66,000	1%
				<i>Aspergillus versicolor</i>	226	5,000,000	94%
				<i>Chaetomium globosum</i>	1	22,000	<1%
				<i>Exophiala jeanselmei</i>	1	22,000	<1%
				<i>Penicillium decumbens</i>	3	66,000	1%
				<i>Penicillium fellutanum</i>	1	22,000	<1%
				<i>Penicillium restrictum</i>	3	66,000	1%
				<i>Penicillium variable</i>	1	22,000	<1%
				Total		5,300,000	
119296 paddle	0.0115	MEA	100x	<i>Aspergillus fumigatus</i>	2	17,000	1%
				<i>Aspergillus sydowii</i>	4	35,000	2%
				<i>Aspergillus versicolor</i>	178	1,500,000	87%
				<i>Penicillium decumbens</i>	8	70,000	4%
				<i>Penicillium fellutanum</i>	2	17,000	1%
				<i>Penicillium restrictum</i>	4	35,000	2%
				<i>Penicillium variable</i>	1	8,700	<1%
				<i>Penicillium viridicatum</i>	3	26,000	1%
				<i>Scopulariopsis chartarum</i>	2	17,000	1%
				Total		1,700,000	

Prestige EnviroMicrobiology, Inc
AIEHA Environmental Microbiology PAT Program participant
Laboratory ID Number 192810
Website: www.prestige-em.com

119297 spinner support	0.1761	MEA	10,000x	<i>Aspergillus ustus</i>	3	170,000	5%
				<i>Aspergillus versicolor</i>	6	340,000	10%
				<i>Penicillium decumbens</i>	6	340,000	10%
				<i>Penicillium restrictum</i>	37	2,100,000	60%
				<i>Penicillium viridicatum</i>	3	170,000	5%
				<i>Scopulariopsis chartarum</i>	7	400,000	11%
				Total		3,500,000	
119298 top of spinner support	0.0374	MEA	10,000x	<i>Aspergillus versicolor</i>	12	3,200,000	50%
				<i>Penicillium decumbens</i>	3	800,000	13%
				<i>Penicillium restrictum</i>	9	2,400,000	38%
				Total		6,400,000	

Report approved: Theresa Lehman
Theresa Lehman, MPH, Lab Director

Quality control check: Chin S Yang
Chin S Yang, Ph.D.

Report review: Theresa Lehman

1. The samples in this report were received in good, acceptable conditions.
2. Percentage is for each group in total population.
3. Concentrations and percentages are rounded to the nearest two significant digits. Total percentage may not add up to 100% due to rounding.
4. MEA=2% malt extract agar.
5. All culture samples are incubated at 25±0.5°C unless otherwise indicated.
6. The detection limit of this analysis is one fungal colony. The quantitation limits vary from analysis to analysis and by air volume. Contact us to determine your quantitation limits.
7. For technical information on result interpretation, please visit www.Prestige-EM.com.

Tait

Prestige EnviroMicrobiology, Inc

Client: United Analytical Services, Inc.

Client Project: 1099492-01

Sample date: 11-2-2010

Submittal date: 11-2-2010

Samples submitted by: Kevin Aikman

Data analysis completed: November 8, 2010

Prestige number: 101103-06

Microscopic Method: Analysis of Tape-Lift Samples for Fungi by Optical Microscopy

Client sample ID Location	Sample dimension	Fungal ID	Fungal structures observed	Fungal density	Notes
#EF-01T Gasket Inside	3/4" x 3/4"	<i>Cladosporium</i>	spores, conidiophores, hyphae	1	Fungal growth
#EF-02T Gasket Inside	3/4" x 3/4"	<i>Cladosporium</i> yeasts	spores, conidiophores, hyphae budding cells	1 1	Fungal growth
#EF-08T Front Half of Outer Tub	3/4" x 3/4"	<i>Cladosporium</i> yeasts	spores, conidiophores, hyphae budding cells	1 1	Mites and their fecal matter observed; Bacteria observed; Fungal growth
#EF-09T Back Half of Outer Tub	3/4" x 3/4"	yeasts	budding cells	1	Bacteria observed; Fungal growth
#EF-10T Back Half of Outer Tub - Rear Rib Str.	3/4" x 3/4"	<i>Cladosporium</i> yeasts unknown	spores, conidiophores, hyphae budding cells other structures	1 1 NA	Mites and their fecal matter observed; Nematodes observed; Bacteria observed; Fungal growth
#EF-07T Back of Det. Dispenser - Main Discharge Tube	3/4" x 3/4"	<i>Cladosporium</i>	spores, conidiophores, hyphae	5	Bacteria observed; Fungal growth

1. The samples in this report were received in good, acceptable conditions.
2. Fungal density rating 1-5 (1 being the lowest and 5 the highest) indicates density of fungal growth structures observed. No fungal density is provided for loose spores, hyphal fragments and other structures.

Report approved: Theresa Lehman
Theresa Lehman, MPH, Lab Director

Quality control check: Chin S Yang
Chin S Yang, Ph.D.

Report review: Theresa Lehman

Prestige EnviroMicrobiology, Inc

Client: United Analytical Services, Inc.

Client Project: 1099492.01

Sample date: 11-2-2010

Submittal date: 11-2-2010

Date of inoculation: 11-3-2010 (swabs)

Samples submitted by: Kevin Aikman

Data analysis completed: November 12, 2010

Prestige number: 101103-06

Culture Method: Culture Analysis of Swab Samples for Bacteria (Heterotrophic Plate Count)

Client sample ID Location	Area (inch ²)	Medium used	Dilution factor	Colony counts	Conc. (CFU/ inch ²)
EF-01B Gasket Inside	1	PCA	20,000x	436	8,700,000 Total 8,700,000
EF-02B Gasket Inside	1	PCA	20,000x	87	1,700,000 Total 1,700,000
EF-03B Gasket Inside	1	PCA	20,000x	166	3,300,000 Total 3,300,000
EF-04B Gasket Inside	1	PCA	20,000x	34	680,000 Total 680,000
EF-05B Gasket Inside	1	PCA	20,000x	31	620,000 Total 620,000
EF-06B Gasket Inside	1	PCA	20,000x	143	2,900,000 Total 2,900,000
EF-07B Back of Detergent Dispenser – Main Drain	1	PCA	20,000x	138	2,800,000 Total 2,800,000
EF-08B Front Half of Outer Tub	1	PCA	20,000x	474	9,500,000 Total 9,500,000
EF-09B Back Half of Outer Tub	1	PCA	20,000x	497	9,900,000 Total 9,900,000
EF-10B Back Half of Outer Tub – Rear Rib Str.	1	PCA	20,000x	248	5,000,000 Total 5,000,000
EF-11B Bearing Seal	1	PCA	20,000x	482	9,600,000 Total 9,600,000
EF-12B Spinner Support	1	PCA	20,000x	492	9,800,000 Total 9,800,000
EF-13B Under Spinner Support	1	PCA	20,000x	334	6,700,000 Total 6,700,000
EF-14B Drum Baffle	1	PCA	20,000x	357	7,100,000 Total 7,100,000
EF-15B F. Blank	NA	PCA	200x	NA	NA

Prestige EnviroMicrobiology, Inc

Report approved: Theresa Lehman
Theresa Lehman, MPH, Lab Director

Quality control check: Chin S Yang
Chin S Yang, Ph.D.

Report review: Theresa Lehman

1. The samples in this report were received in good, acceptable conditions.
2. Percentage is for each group in total population.
3. Concentrations and percentages are rounded to the nearest two significant digits. Total percentage may not add up to 100% due to rounding.
4. PCA=plate count agar.
5. All culture samples are incubated at $25\pm 0.5^{\circ}\text{C}$ unless otherwise indicated.
6. The detection limit of this analysis is one fungal or bacterial colony. The quantitation limits vary from analysis to analysis and by air volume. Contact us to determine your quantitation limits.

Prestige EnviroMicrobiology, Inc
ATMA Environmental Microbiology PAT Program participant
 Laboratory ID Number 192810
 Website: www.prestige-em.com

Client: United Analytical Serv., Inc.

Client Project: 1099492.01

Sample date: 11-2-2010

Submittal date: 11-2-2010

Inoculation dates: 11-3-2010 (Swab)

Samples submitted by: Kevin Aikman

Data analysis completed: November 15, 2010

Prestige number: 101103-06

Culture Method: Culture Analysis of Swab Samples for Fungi

Client sample ID Location	Area (in ²)	Medium used	Dilution factor	Fungal Identification	Colony counts	Conc. (CFU/ in ²)	Percentage
EF-01M Gasket inside	1	MEA	1,000x	<i>Fusarium solani</i> <i>Paecilomyces marquandii</i> <i>Scolecobasidium constrictum</i> yeasts	3 1 6 245	3,000 1,000 6,000 250,000 Total 260,000	1% <1% 2% 96%
EF-02M Gasket inside	1	MEA	10,000x	<i>Scolecobasidium constrictum</i> yeasts	1 32	10,000 320,000 Total 330,000	3% 97%
EF-03M Gasket inside	1	MEA	10,000x	<i>Fusarium solani</i> <i>Geotrichum candidum</i> yeasts	16 2 127	160,000 20,000 1,300,000 Total 1,500,000	11% 1% 88%
EF-04M Gasket inside	1	MEA	10,000x	<i>Fusarium solani</i> <i>Geotrichum candidum</i> <i>Paecilomyces marquandii</i> <i>Scolecobasidium constrictum</i> yeasts	11 7 4 15 358	110,000 70,000 40,000 150,000 3,600,000 Total 4,000,000	3% 2% 1% 4% 91%
EF-05M Gasket inside	1	MEA	10,000x	<i>Fusarium solani</i> <i>Geotrichum candidum</i> yeasts	11 4 183	110,000 40,000 1,800,000 Total 2,000,000	6% 2% 92%
EF-06M Gasket inside	1	MEA	1,000x	<i>Aspergillus sydowii</i> <i>Fusarium solani</i> <i>Geotrichum candidum</i> <i>Paecilomyces marquandii</i> <i>Scolecobasidium constrictum</i> yeasts	1 5 2 1 1 286	1,000 5,000 2,000 1,000 1,000 290,000 Total 300,000	<1% 2% 1% <1% <1% 97%
EF-07M Back of detergent dispenser – main drain	1	MEA	10,000x	<i>Aspergillus sydowii</i> <i>Cladosporium</i> spp. <i>Geotrichum candidum</i> <i>Scolecobasidium constrictum</i>	1 18 1 9	10,000 180,000 10,000 90,000 Total 290,000	3% 62% 3% 31%

Prestige EnviroMicrobiology, Inc

AIHA Environmental Microbiology PAT Program participant

Laboratory ID Number 192810

Website: www.prestige-em.com

EF-08M Front half of outer tub	1	MEA	10,000x	<i>Cladosporium</i> spp. <i>Geotrichum candidum</i> <i>Scolecobasidium constrictum</i> yeasts	13 1 1 9	130,000 10,000 10,000 90,000 Total 240,000	54% 4% 4% 38%
EF-09M Back half of outer tub	1	MEA	1,000x	<i>Geotrichum candidum</i> <i>Rhodotorula glutinis</i> <i>Scolecobasidium constrictum</i> yeasts	1 1 1 31	1,000 1,000 1,000 31,000 Total 34,000	3% 3% 3% 91%
EF-10M Back half of outer tub – rear rib str.	1	MEA	1,000x	<i>Aspergillus carbonarius</i> <i>Penicillium</i> spp. <i>Trichoderma atroviride</i> yeasts	2 2 1 92	2,000 2,000 1,000 92,000 Total 97,000	2% 2% 1% 95%
EF-11M Bearing seal	1	MEA	100x	<i>Acremonium kiliense</i> <i>Aspergillus sydowii</i> <i>Chaetomium globosum</i> <i>Harposporium anguillulae</i> <i>Penicillium</i> sp. <i>Scolecobasidium constrictum</i>	6 5 3 53 1 14	600 500 300 5,300 100 1,400 Total 8,200	7% 6% 4% 65% 1% 17%
EF-12M Spinner support	1	MEA	10,000x	<i>Acremonium kiliense</i> <i>Aspergillus carbonarius</i> <i>Paecilomyces marquandii</i> <i>Scolecobasidium constrictum</i>	51 1 3 2	510,000 10,000 30,000 20,000 Total 570,000	89% 2% 5% 4%
EF-13M Under spinner support	1	MEA	1,000x	<i>Acremonium kiliense</i> <i>Fusarium solani</i> <i>Scolecobasidium constrictum</i>	2 23 5	2,000 23,000 5,000 Total 30,000	7% 77% 17%
EF-14M Drum baffle	1	MEA	100x	<i>Fusarium solani</i> <i>Harposporium anguillulae</i>	2 1	200 100 Total 300	67% 33%
EF-15M Field blank	NA	MEA	100x	No fungal growth detected	NA	NA	NA

Report approved: Theresa Lehman
Theresa Lehman, MPH, Lab Director

Quality control check: Chin S Yang
Chin S Yang, Ph.D.

Report review: Theresa Lehman

1. The samples in this report were received in good, acceptable conditions.

Prestige EnviroMicrobiology, Inc

AIDHA Environmental Microbiology PAT Program participant

Laboratory ID Number 192810

Website: www.prestige-em.com

2. Percentage is for each group in total population.
3. Concentrations and percentages are rounded to the nearest two significant digits. Total percentage may not add up to 100% due to rounding.
4. MEA=2% malt extract agar.
5. All culture samples are incubated at $25 \pm 0.5^{\circ}\text{C}$ unless otherwise indicated.
6. The detection limit of this analysis is one fungal colony. The quantitation limits vary from analysis to analysis and by air volume. Contact us to determine your quantitation limits.
7. For technical information on result interpretation, please visit www.Prestige-EM.com.

EXHIBIT 5

EPPSTEINER & FIORICA ATTORNEYS LLP

San Diego
1333 High Bluff Drive
Suite 155
San Diego, California 92110
Tel (858) 350-1500
Fax (858) 350-1501

Stuart M. Eppsteiner
Andrew P. Fiorica
Robert J. Pritish
Brian K. Findley
Andrew J. Kubik
*Also Admitted in Colorado

Colorado
1436 Pearl Street
Suite 202
Boulder, Colorado 80102
Tel (877) 480-1500
Fax (858) 350-1501

www.eppsteiner.com

December 15, 2009

VIA CERTIFIED U.S. MAIL - RETURN RECEIPT REQUESTED

BSH Home Appliances Corporation 5551 McFadden Avenue Huntington Beach, CA 92649	Pacific Sales, Inc. 24120 Garnier Street Torrance, CA 90505
Michael Traub 5551 McFadden Avenue Huntington Beach, CA 92649	Pacific Sales Kitchen and Bath Centers, Inc. 7601 Penn Avenue S. Richfield, MN 55423
Best Buy Company Incorporated Legal Department 7601 Penn Avenue S. Richfield, MN 55423	CT Corporation Re: Pacific Sales Kitchen and Bath Centers, Inc. 818 West Seventh Street Los Angeles, CA 90017

Re: Notice of Violation of the California Consumer Legal Remedies Act (California Civil Code section 1750 et seq.) Related to the Advertising and Marketing of Bosch Frontload Washing Machines

To Whom It May Concern:

The law firm of Eppsteiner & Fiorica Attorneys, LLP represents Nancy Wentworth, a California resident who purchased a Bosch DLX Series frontload washing machine from Pacific Sales, Inc. of Torrance, California for her personal, family and household use.

This letter serves as a pre-litigation notice of BSH Home Appliances Corporation's ("Bosch") violations of California Civil Code § 1750 et. seq., the California Legal Remedies Act ("CLRA") and demand for corrective action pursuant to the CLRA. This pre-litigation notification is made on behalf of Ms. Wentworth and all consumers that are similarly situated to Ms. Wentworth (e.g. other buyers of front load washing machines manufacturers by Bosch and sold under the brands Bosch and Siemens ("Machines")).

Bosch has engaged in acts and practices, which are proscribed by the CLRA (See §

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1770), by selling its defective frontload washers under the Bosch and Siemens brands. Specifically the Machine(s) have inherent design defects, defects in component parts and defects in workmanship that cause them to:

1. retain water and moisture;
2. retain detergent and fabric softener such that residue accumulates and causes the growth of mold, mildew and similar bio-organic material ("Mold") and malodorous scents resulting from their presence;
3. accumulate residue and Mold, and emit malodorous scents after the Machines are operated using the amount and type of detergent or softener Bosch recommends;
4. accumulate residue when detergent and softener dispenser compartments are filled to, or below, the detergent and softener fill lines Bosch placed in the Machines;
5. grow and accumulate Mold on parts, pieces and areas that are within the Machines;
6. produce foul and noxious odors;
7. grow and retain Mold and make clothes washed in the Machines smell moldy and malodorous;
8. be unsafe for the ordinary purpose for which the washing machines were designed and sold (e.g. making clothes clean and removing unpleasant odors);
9. not be able to clean themselves in a manner necessary for a Machine to produce clean clothes free of malodorous smells; and
10. be run with high temperature water and/or with special scented or anti-mold agents in an effort to temporarily remove Mold and malodorous smells associated with the presence Mold.

The defects result in Mold growing on and becoming imbedded in the rubber gasket/bellows/boot and/or the portions of the washer adjacent to, or in contact with, the door gasket/bellows/boot.

Water and moisture are retained in areas of the Machines that cause and allow Mold to appear, grow and be retained within the Machines. The presence of Mold causes: 1) the Machines to smell malodorous; 2) clothes washed in the Machines to smell malodorous; 3) clothes washed in the Machines to be rendered worth less; and 4) illness and injury to people.

The Machines are designed, made of component parts and materials, and assembled such that it is impossible to clean the Machines of Mold once Mold appears in or on materials within the Machines.

Bosch knew before it sold the Machines that they would cause Mold to grow inside of them and would make clothes washed in them smell malodorous. Furthermore, Bosch knew that Mold causes adverse reactions in many people causing illness and injury. However, Bosch concealed this material information from Ms. Wentworth, all similarly situated consumers, and all parties in the chain of commerce that led to Ms. Wentworth's purchase and similarly situated

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consumers' purchases of Machines. Had Bosch made said material information known to Ms. Wentworth and all other similarly situated consumer purchasers of Machines, none of them would have bought a Machine.

Selling washing machines that have inherent properties that cause Mold to grow and accumulate and which Mold impregnates portions of the Machines and clothes washed in them with malodorous scents violates California Civil Code § 1770. These violations include, but are not limited to subsections 1770(a)(5) and 1770(a)(7) by representing that the Machines (i) have "... characteristics, ... uses, [or] benefits, ... which [they do] not have," and/or (ii) are of "a particular standard, quality, or grade."

Bosch's Omissions of Material Facts in Violation of the CLRA

As described above, Bosch misrepresented the use and characteristics of the Machines through concealment and omission of material facts. Bosch failed to inform consumers directly or through wholesalers and retailers that Mold would grow in their Machines and that clothes washed in the Machines would smell like Mold and carry malodorous scents when the Machines were used in a foreseeable manner and as recommended by Bosch. A washing machine is used to clean clothes and rid them of bad smells. The Machines make clothes smell bad and carry Mold. The Machines were misrepresented regarding their characteristics, uses and benefits. They do not clean clothes; rather they make them moldy and smell bad.

Bosch's Misrepresentations of the Uses, Benefits and Characteristics of the Machines

At the most basic level, the function of a washing machine is to clean clothes so that they are clean and either fresh smelling, or at the very least, odorless. The Machines fail this most basic purpose. The Machines do not clean things, which is the use for which they were sold and the benefit of using them. The fact that Bosch knew the Machines generated mold and made clothes washed in them smell moldy means that Bosch knew it was not selling products that washed clothes. Effectively, calling the Machines "washing machines" or "washers" was a misrepresentation of their characteristics, benefits and uses. Bosch did not intend to sell a washing machine as advertised (e.g. one that cleans clothes, since it knew the Machines would grow and accumulate mold). The very representation that the Machines are "washing machines" is false. All representations Bosch made with regard to cleanliness of laundry that comes out of the Machines is also false.

Bosch also violated the California Consumer Legal Remedies Act, California Civil Code § 1770(a)(9) by "advertising goods or services with intent not to sell them as advertised." First, Bosch knew the Machines grew and accumulated mold. Second, it knew when it advertised the Machines as "washing machines" or "washers" that the Machines would not wash or clean things, but make them moldy and smelly. Therefore, Bosch advertised the Machines with the intention of not selling machines that washed or cleaned clothes.

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Mold Issues

Mold, according to the Federal Centers for Disease Control and Prevention, can cause symptoms that include nasal stuffiness, eye irritation, wheezing, skin irritation, fever, and shortness of breath. For people with chronic lung illnesses, mold infections can develop in their lungs, and exposure to mold can also bring on asthma attacks.

In response to consumer complaints about the mold problem, Bosch employees have recommended that consumers periodically run extra bleach and hot water cleaning cycles, and wipe-down the drum and bellows after each wash. These recommendations are not part of normal washing machine ownership. The need to spend money to remove the malodorous scent from the Machines and to pay for electricity and water needed to run hot water cycles to try and redress the effects of the Machines' defects is a damage each Machine owner has borne and one that will grow and increase with time.

Water accumulates in or adjacent to the door frame gasket/bellow of the Machines after every wash cycle. This post-wash moisture and water accumulation is the result of defects inherent in the Machines about which Ms. Wentworth, and others similarly situated, complain.

Request for Material That Supports Bosch's Failure to Disclose that the Machines Grow and Accumulate Mold

On behalf of our clients and absent class members, we ask that Bosch provide all information and data, including when said information and data came into Bosch's possession, which supports the conclusion that the Machines do not grow and accumulate mold. If Bosch fails to produce this information within thirty calendar days, it will be presumed that Bosch has no information that the Machines do not grow and accumulate mold, further demonstrating that Bosch concealed material information and misrepresented the Machines' uses, characteristics, benefits and did not intend to sell the Machines as advertised.

Demand for Corrective Action & Response to This Demand

On behalf of Ms. Wentworth, and all similarly situated Machine owners, we hereby demand that Bosch correct, repair or modify their Machines so that they do not cause Mold to grow within them and make clothes washed in them malodorous. An alternative to repair or modification is for Bosch to provide replacement Machines to Ms. Wentworth and all similarly situated consumers. Our clients are also open to consider accepting cash payments from Bosch so they can purchase replacement washing machines if Bosch will not offer to repair/modify them so that they will not grow and accumulate mold.

Replacement of Machine door frame gasket/bellows/boot with a new gasket/bellows/boot that is the same as the original gasket/bellows/boot will not be a repair or remedy of the defect that causes Mold to grow in Bosch front load gasket/bellows/boot. The replacement of a part that is the same that was used in the Machines' original manufacture will only assure future mold growth in the Machines. To repair the conditions that cause mold to grow in the Machines,

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Bosch must provide a repair or modification of the Machines that keeps Mold from growing on and in the Machines. To date it has not done so. However, this office, on behalf of Ms. Wentworth and all similarly situated Machine purchasers, remains open to learning about Bosch's proposals of how to modify and truly repair the Machines so that mold will not grow within them. Please call me as soon as possible to discuss Bosch's proposals to address the matters described above.

Please, within 30 calendar days of your receipt of this letter, agree to repair and modify the Machines so that they indefinitely do not grow mold inside of them. If Bosch does not contact me to address the foregoing matter, our client, and through him, those similarly situated, will sue Bosch for, among other things, violation of the California Consumer Legal Remedies Act (California Civil Code § 1750 et. seq.).

Demand Bosch Not Destroy Writings and Preserve the Writings Listed Below

The last point of this letter is to demand that Bosch preserve and maintain all of the following "Writings"¹ pending its production to us in litigation or the resolution of this matter:

- a. Writings regarding the growth, presence and accumulation of mold, mildew, or similar bio-organic material in Bosch frontload washing machines sold in California (the "Machine(s)");
- b. Writings that are advertisements, brochures, pamphlets, sales and marketing material disseminated in or from California and that are regarding the Machines;
- c. Writings that were, or are with regard to communications to wholesalers or retailers in the chain or distribution of the Machines sold in California.
- d. Writings that Bosch intended to be disseminated to Machine purchasers and that are regarding the Machines;
- e. Writings that are complaints or are regarding complaints communicated from any source regarding the Machines;
- f. Writings that communicate all or some of the following: the names, addresses, phone numbers of Machine owners;
- g. Writings that communicate complaints regarding the performance of a Machine;

¹ The term or terms "WRITING" and "WRITINGS" as used herein means writings as defined in California Evidence Code § 250, and includes the original or a copy of handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them. "WRITINGS" also includes all electronic or magnetic files, or mediums that store information, including but not limited to electronic or computer stored files, email, CAD files, spreadsheets, databases, data used in a database, PowerPoint presentations, or other form of computer based visual presentations. "WRITINGS" that exist in electronic, magnetic or computer based formats include as part of those "WRITINGS" any associated metadata, including date and time stamps. Do not remove metadata from the "WRITINGS".

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-
- h. Writings from absent class members regarding breaches of Bosch's express warranty that applied to the Machines;
 - i. Writings that identify the names, addresses and phone numbers of entities which Bosch approved and authorized to service/repair the Machines;
 - j. Writings to Bosch approved service/repair providers regarding Mold in the Machines;
 - k. Writings regarding how many Machines Bosch manufactured and sold in the United States in the last ten years;
 - l. Writings that identify the names, addresses and phone numbers of Bosch authorized wholesalers and retailers of the Machines;
 - m. Writings that are or with regard to communications between Bosch and the Consumer Product Safety Commission;
 - n. Writings regarding the health hazard of Mold in the Machines;
 - o. Writings regarding health risks to household members that live in homes with frontload washers that have mold in them; and
 - p. Writings regarding safety issues relating to leaving the door open after each use.

I look forward to being contacted by Bosch and receipt of its proposal to remedy the Mold problem in the Machines.

Yours truly,

EPSTEINER & FLORICA ATTORNEYS, LLP


Stuart M. Epstein

SME/AJK/mmg

Enclosure: Service List of Addresses to Which Letter was sent via certified mail return receipt requested.

TITLE OF MATTER Bosch DLX Series Frontload Washing Machines	
ATTORNEY(S) NAME AND ADDRESS TELEPHONE 858.350.1500 Stuart M. Eppsteiner, SBN 98973 Andrew P. Florica, SBN 200732 Eppsteiner & Florica Attorneys, LLP 12555 High Bluff Drive, Suite 155 San Diego, CA 92130	
ATTORNEY(S) FOR: Nancy Wentworth	

PROOF OF SERVICE

C.C. P. 1010.5, 1010.6, 1010.2, 1013a (3)

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the county of San Diego, State of California. I am over the age of 18 and not a party to the matter; my business address is: Eppsteiner & Florica Attorneys, LLP, 12555 High Bluff Drive, Suite 155, San Diego, CA 92130.

On December 15, 2009, I served the following document(s) described as: **NOTICE OF VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT** on interested parties as follows:

BSH Home Appliances Corporation 5551 McFadden Avenue Huntington Beach, CA 92649	Pacific Sales, Inc. 24120 Garfield Street Torrance, CA 90505
Michael Traub 5551 McFadden Avenue Huntington Beach, CA 92649	Pacific Sales Kitchen and Bath Centers, Inc. 7601 Penn Avenue S. Richfield, MN 55423
Best Buy Company Incorporated Legal Department 7601 Penn Avenue S. Richfield, MN 55423	CT Corporation Re: Pacific Sales Kitchen and Bath Centers, Inc. 818 West Seventh Street Los Angeles, CA 90017

X (BY CERTIFIED MAIL, RETURN RECEIPT) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: December 15, 2009




LUPE SURO HORN

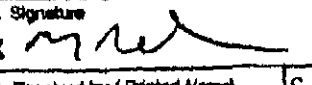
SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.		<p>A. Signature <i>[Signature]</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Michael [illegible]</i></p> <p>C. Date of Delivery <i>DEC 21 2009</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>1. Article Addressed to: <i>Pacific Sales Kitchen and Bath Centers, Inc. 7601 Penn Ave S. Ridgfield, MN 55423</i></p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
2. Article Number (or from service label) <i>7000 1670 0009 79542746</i>			
PS Form 3811, February 2004		Domestic Return Receipt 102568-02-00-1540	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.		<p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>[illegible]</i></p> <p>C. Date of Delivery <i>DEC 14 2009</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>1. Article Addressed to: <i>CT Corporation Attn: Pacific Sales Kitchen and Bath Centers, Inc. 818 West Seventh Street Los Angeles CA 90017</i></p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
2. Article Number (or from service label) <i>7000 1670 0009 79542739</i>			
PS Form 3811, February 2004		Domestic Return Receipt 102568-02-00-1540	

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<ul style="list-style-type: none">Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.		<p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>[illegible]</i></p> <p>C. Date of Delivery <i>DEC 15 2009</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>1. Article Addressed to: <i>Bath Home Appliances Corp 5351 McFadden Avenue Huntington Beach CA 92649</i></p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
2. Article Number (or from service label) <i>7000 1670 0009 79542739</i>			

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.		<p>A. Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>G. Oliver</u> C. Date of Delivery <u>12-15-29</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
1. Article Addressed to: <u>Michael Traub</u> <u>5551 McFadden Avenue</u> <u>Huntington Beach CA 92649</u>		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (or from service label) <u>7000 1670 0009 7954 2175</u>		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1040

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.		<p>A. Signature <u>X</u>  <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>Michael</u> C. Date of Delivery <u>DEC 21 2009</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
1. Article Addressed to: <u>Best Buy Company, Inc</u> <u>Legal Department</u> <u>7601 Penn Avenue S</u> <u>Richfield, MN 55423</u>		3. Service Type <input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (or from service label) <u>7000 1670 0009 7954 2722</u>		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1040